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ABSTRACT

This hearing was held to receive testimony on private-sector employment discrimination against individuals with cancer and individuals with handicaps. The testimony related to two bills: H.R. 1546, to prohibit discrimination against cancer patients, and H.R. 192, to prohibit employment discrimination against individuals with a disability or a perceived disability. The hearing transcript contains the oral statements, prepared written statements, letters, and supplemental materials from: (1) Mario Biaggi and John Moakley, Representatives in Congress; (2) representatives from private organizations, including National Coalition for Cancer Survivorship, Metropolitan Washington Area Candlelighters, and CANCERVIVE; (3) representatives from colleges, including Gallaudet University and the Training and Research Institute for Adults with Disabilities at Boston College; (4) government agencies, including the Massachusetts Commission Against Discrimination and the Niles Township Sheltered Workshop; and (5) a cancer survivor and an individual with a disability. Also included is a report from the Congressional Research Service titled "Survey of State Statutes Concerning Employment Discrimination of Handicapped Persons." (JDD)

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HEARING ON DISCRIMINATION AGAINST CANCER VICTIMS AND THE HANDICAPPED

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 17, 1987

Serial No. 100-31

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HEARING ON DISCRIMINATION AGAINST CANCER VICTIMS AND THE HANDICAPPED

WEDNESDAY, JUNE 17, 1987

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:00 a.m., in room 2257, Rayburn House Office Building, Hon. Matthew G. Martinez (chairman of the subcommittee) presiding.

Members present: Representatives Martinez, Williams, Hayes, Owens, Jontz, and Gunderson.

Members also present: Representative Biaggi of the full Committee on Education and Labor and Representative Moakley of Massachusetts.

Staff present: Eric L. Jensen, staff director; Valerie White, legislative assistant; and Tammy Harris, hearings clerk. Mary Gardner, Minority legislative associate; Jeff Fox, assistant minority counsel; Beth Beulhman, Education and Laor Minority Staff Director.

Mr. MARTINEZ. We are now in session. Today's hearing of the Employment Opportunities Subcommittee is being held to receive testimony on employment discrimination against cancer and handicapped individuals in the private sector.

As the chairman of the Employment Opportunities Subcommittee, I am personally committed to seeing that all obstacles barring the way of individuals who want to work and participate equally in society be eradicated. Employers should focus on a worker's ability to produce and not on inherent individual factors not having any bearing on work merit. Many individuals are capable of making productive and loyal contributions to companies, if only employers reasonably accommodated the special working requirements of these employees.

Today we will look at two bills which will add protection for workers. Congressman Biaggi's bill, H.R. 1546, will prohibit discrimination against cancer patients. Last year Congress approved Mr. Biaggi's House Concurrent Resolution 321, expressing the sense of Congress that former and current cancer patients should receive fair and equal treatment in the workplace.

In addition, we will also receive testimony on H.R. 192, introduced by Congressman Moakley, to prohibit employment discrimination against individuals with a disability or a perceived disability by private employers.

To demonstrate the scope of the problem, a recent estimate showed that there are 22 million physically disabled individuals in the United States, yet only 800,000 of these people are employed. A staggering 70 percent of the blind persons, 55 percent of paraplegics, and some 85 percent of people with epilepsy are unemployed. In addition, the American Cancer Society estimates that 5 million people in America today have cancer or a history of cancer. Of these, 1 million workers will face some form of employment discrimination.

The result of discrimination paints an oppressive picture of human and economic waste which robs us of a valuable resource base. Society loses full employment productivity, and the Federal and State governments lose valuable tax revenues while having to pay out large sums of money for subsistence relief. More importantly, discrimination stigmatizes a population with high dedication and skills by segregating them away from mainstream participation. Simultaneously, discrimination takes away these workers' chief means for self-esteem and their avenue for self-sufficiency. This waste is the greatest tragedy to all of us.

Mr. MOAKLEY. Mr. Chairman, if I may, for the edification of the people here, I understand that there is a blockage on the 14th Street bridge, that there is some sort of a bomb scare in the Mint, and that traffic has been cut off for the last hour or so, so that may result in the inability of some of the membership to appear here in a timely fashion.

[Recess taken.]

Mr. MARTINEZ. We are now joined by Pat Williams, a member of the committee from Montana, and we are official.

Mr. Moakley, would you like to begin?

STATEMENT OF HON. JOHN JOSEPH MOAKLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MOAKLEY. Mr. Chairman and member of the subcommittee, Pat, member of the Subcommittee on Employment Opportunities, I would like to thank you very much for the opportunity to testify before the subcommittee on behalf of my bill, which would provide equal protection in employment to disabled individuals under the Civil Rights Act of 1964.

Despite strong congressional support for programs to further enhance opportunities for disabled individuals, no national standard has been set to prohibit discrimination against individuals who are physically or mentally challenged. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance, or any program or activity conducted by an Executive agency or the United States Postal Service. While this statute, Mr. Chairman, is very significant and it is a great step towards eliminating discrimination on the basis of handicap, it only affects a small portion of our work force and the statute does not provide protection to individuals in the private sector.

So, Mr. Chairman, I have introduced H.R. 192, to enact a nationwide policy to make discrimination against disabled individuals an unlawful employment practice. This legislation would amend Title

7 of the Civil Rights Act of 1964 to include handicapped individuals.

As you know, Mr. Chairman, the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin, but it provides no protection for disabled workers. Handicapped individuals share a host of deprivations very similar to deprivations directed toward minority groups which are now protected under the Civil Rights Act. Realizing the parallels between disabled individuals and minority groups, I strongly believe that the best way to combat flagrant discrimination is through a remedy which has proven successful in the past, the Civil Rights Act of 1964.

Currently 45 States prohibit employment discrimination of handicapped persons. Of the 45 States, all but 6 States incorporate this prohibition in their civil rights statute which prohibits job discrimination on the basis of race, color, religion, national origin, sex, and age as well as handicap. This legislation to expand the coverage of Title 7 by including discrimination against handicapped persons would align the Federal sector treatment of discrimination against handicapped persons in a manner similar to the prevailing practices at the State level.

Mr. Chairman, I will include for the record a copy of a survey of the State statutes concerning employment discrimination of handicapped persons which was conducted by the Congressional Research Service in May of 1987.

Statistical studies have shown that the unemployment rates among disabled individuals are exceedingly higher than the rates of unemployment for nondisabled individuals. A study conducted by the President's Commission on Employment of the Handicapped reveals that of the 22 million disabled individuals in the United States, only 800,000 are employed. Only one-third of the blind people, less than one-half of the paraplegic, less than one-quarter of the people with epilepsy, and very, very few individuals with cerebral palsy are employed.

These statistics are very discouraging. Furthermore, studies have indicated that most handicapped individuals are able to perform a regular, full-time job very well. Very few unemployment cases amongst handicapped individuals are a result of the person's innate limitations due to a disability. I reject the reasoning that a disabled individual does not have the ability to complete the tasks and assignments for a regular job. The statistics clearly disprove this myth, and the facts prove that in most cases a disability does not adversely affect a worker's performance.

Numerous studies, Mr. Chairman, have indicated that handicapped workers, when assigned to appropriate positions, perform as well as or better than their nonhandicapped coworkers. The United States Commission on Civil Rights studied appointments of severely handicapped workers to Federal agency jobs for a period of 10 years, and concluded that the work record of the individuals was excellent, so it is ludicrous that individuals with disabilities continue to be subjected to employment discrimination, since reports clearly indicate that they are very, very competent and very diligent workers.

Society and our Nation could greatly benefit from integrating more individuals with disabilities into the work force. The increased participation of handicapped individuals in the work force could yield $1 billion annually in increased employment and earnings for disabled individuals and remove many individuals from welfare programs. In addition to increasing the Gross National Product, Mr. Chairman, the earnings of handicapped individuals would result in additional tax revenues for Federal, State and local governments. The contributions of disabled workers would clearly benefit our economy.

Not only would the enactment of this legislation alleviate the economic burden to the American taxpayers, it would also do what is morally correct. This legislation would aim to eradicate the unjustifiable stigmas and barriers that prevent many mentally and physically challenged individuals from becoming employed. Some employers will not hire qualified individuals with disabilities because of false generalizations and misconceptions—fears of increased insurance rates, fears of lower job performances, job stability, fears of poor attendance turn employers away from hiring individuals with disabilities. Employers in the private sector would have to renounce their biases towards individuals with handicaps, just like they renounced their biases in 1964 on the basis of race, color, religion, sex, or national origin, and hire or not hire an individual on the basis of his or her qualifications.

Discrimination towards disabled individuals, as I said, Mr. Chairman, is morally wrong. Each and every American should have the right to work. The flagrant discrimination is a waste of human resources and an enormous toll on human dignity. All individuals should be accorded the right to use their ability to the utmost and not be deprived of employment opportunities simply because they have a disability. Business and labor organizations and all of society must strive to eradicate discrimination and the unjustifiable misconceptions that are at the root of this discrimination.

So, Mr. Chairman, it is vital to realize that most of these people desire employment but do not work because of an unjust and discriminatory hiring policy.

H.R. 192 calls for handicapped persons to be hired or not hired on the basis of their ability to perform the essential functions of that job. I have introduced H.R. 192 because I strongly believe that this legislation is vital. A comprehensive nationwide law needs to be enacted to set a national standard to eradicate the existing discrimination towards individuals with disabilities. Passage of this legislation, I think, is long overdue.

Mr. Chairman, I would like to thank the members of the Subcommittee on Employment Opportunities for holding the hearings. In addition, I would like to thank the 54 of my colleagues who expressed their support for H.R. 192 by cosponsoring this bill.

Mr. Chairman, I have invited members to testify here this afternoon, non-Members of Congress but very important people in the community. You will hear later on your panel 2 from Alex Rodriguez, commissioner of the Massachusetts Commission Against Discrimination. You will hear from Robert Davila, Ph.D., Vice President of Pre-College, Gallaudet University, and you will hear from Dr. William Kiernan, Director of Rehabilitation, Developmental

Evaluation Clinic of the Children's Hospital of Boston. All three are fine witnesses. All three men have very important statements to make to this committee.

Once again, Mr. Chairman, thank you very much for your consideration here this morning.

Mr. MARTINEZ. Thank you very much, Congressman Moakley.

You know, your bill should have 435 cosponsors. Sometimes I believe in some instances we still live in the Dark Ages. People are just not educated or enlightened to the realities.

Mr. MOAKLEY. Mr. Chairman, this is probably one of the few times where the States are so far out in front of the Federal Government, it's not funny. Forty-five States have very similar laws as the one we are trying to put on the books here in the Federal Government.

Mr. MARTINEZ. It's amazing. We might catch up, if we get this bill acted on.

One of the questions I would like to ask you, that your testimony didn't touch on but we have heard on several occasions, is that the cost would be prohibitive to providing access for these handicapped workers. I really can't see how, especially since some of these people, because they have the need to prove themselves, work more diligently than the average employee. Would you like to comment on that fallacy of the cost?

Mr. MOAKLEY. Well, actually we wouldn't expect an employer to build a certain type entranceway to hire one employee in his plant. There might be a little cost of moving a desk from here to there or a machine, to give a certain entrance, but, Mr. Chairman, if you look at the overall picture, there would be $1 billion more in the economy. You would be taking people off of welfare. You would be taking them off of city, State and Federal grant projects, and the cost of human dignity, restoring to some of these handicapped people the human dignity that they have lost because people feel, just because they have some disability, that they are totally incapacitated to do any piece of employment, which is incorrect.

Mr. MARTINEZ. You know, it's amazing that employers don't look at the fact that there are a lot of people that they discriminate against, that wouldn't require any changes that could fit right in.

I'll give you the two best examples I can, right here in Congress. Remember John Rousselot?

Mr. MOAKLEY. Very much.

Mr. MARTINEZ. He was handicapped and it didn't stop him from doing anything, including getting elected to Congress.

You know, we have more recently heard about Tony Coelho having epilepsy and at a very young age graduating from college, as an overachiever, and entering into a seminary. He all of a sudden was rejected from a seminary because of his epilepsy. There was a period of time when he really hit a low and he started to drink because he figured, you know, all the things that he wanted to accomplish and he felt he could accomplish were going to be denied him. His driver's license was taken away. With the medication now that controls epilepsy, there is really little danger or risk involved in hiring an epileptic. Yet today most people hide it because they feel if they divulge they have epilepsy, they are not

going to get hired, and if they divulge it after they are hired, they are going to get fired.

Mr. MOAKLEY. Mr. Chairman, as you well know, there are many people that have disabilities that don't show, but there are people that have disabilities that are very obvious. We have a State Senator, John Berry, that suffers from some kind of—I don't know if it is cystic fibrosis—and it is very obvious. He has twitches and everything else. The fellow is probably one of the best Senators, the wittiest fellow, makes a great presentation, and once you are with him for 3 minutes you forget about any disability.

The problem is that people just can't get by that initial sight of a disability. They feel these myths and misconceptions, that if a person is disabled in any way, that they are disabled in all ways to perform any function. This is what has to be eradicated from the minds of the employers in this country.

Mr. MARTINEZ. They have to be educated.

Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Joe, we are appreciative of being able to follow your leadership on this. I have joined you as a cosponsor on the legislation——

Mr. MOAKLEY. I thank you.

Mr. WILLIAMS [continuing]. And I commend you for it.

Let me be sure I understand your intention here. Section 504 now, as you know, prohibits discrimination against people with handicaps in the private sector or to any agency that receives Federal funds. As I understand it, you want to extend that full protection but you want to do it under Title 7 of the Civil Rights Act.

Mr. MOAKLEY. That's right. Many States have already done that.

Mr. WILLIAMS. Yes, and I agree with that. I do have some concern—even though I am supportive of your legislation and would like to see it come through—I do have some concern that if we open up Title 7 on the floor, there may be a rascal or two out there who wants to take the opportunity to add some amendments, which might be allowed under the Rules Committee on which you sit, that could really create some great difficulty that we would rather not see. But other than that possibility or probability, I want to lend whatever support I can to your efforts.

It seems to me, Mr. Chairman, that the greatest struggles in American history have been those that have been involved in simply providing all of the benefits and freedoms of the Constitution of the United States to all American citizens. The greatest battle internally to this country, with the single exception of the Civil War, has been the effort of the minorities of the United States to insist that the Constitution applies to them, too. I have never quite understood it but I have always been pleased that eventually this country, this Congress, and the courts have decided that everyone deserves the protection guaranteed in that 200-year-old document. Therefore, Joe, you are in a long line of those Americans who understand that the Constitution should apply to everyone in this instance, including people with disabilities, and I commend you.

Mr. MOAKLEY. Thank you.

Mr. Chairman, may I respond?

Mr. MARTINEZ. yes.

Mr. MOAKLEY. The thing that is mind-boggling is that there are 22 million people, citizens of the United States, that have some kind of a handicap, and out of that 22 million only 800,000 are employed. I mean, those figures are so out of line, and something has to be done to bring these people into the workplace. That is the reason I filed this legislation.

Mr. WILLIAMS. Joe, the example that comes to my mind—both the chairman and you provided examples—when our former Speaker, your close friend, Tip O'Neill, served in Massachusetts and then later came here, his administrative assistant was Leo Diehl, a person who appeared—when you saw him—appeared to be greatly disabled, but he ran probably the smoothest-running Speaker's office in the history of this Congress. You know, if we hadn't had Leo around here for all those years, things would have been a great deal more difficult.

Mr. MOAKLEY. You are absolutely right. I think that is a graphic example, and I probably should have brought that out in my testimony. Here is a fellow that suffered as a polio victim from childhood. In fact, when the Speaker and he were boyhood friends, the Speaker used to carry him around on his shoulders. They were both in the Massachusetts Legislature together. Mr. Diehl ended up as Tax Commissioner of the Commonwealth of Massachusetts. He ended up as his administrative assistant down here when Tip became speaker, and he used those canes or sticks or crutches or whatever you want to call them and he got around, and it didn't deter him from doing anything that any of us did.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. MARTINEZ. Thank you, Mr. Williams.

Mr. Biaggi?

Mr. BIAGGI. I have a statement I would like to read, but first I want to commend my good friend——

Mr. MOAKLEY. Thank you, Mr. Biaggi.

Mr. BIAGGI [continuing]. The gentleman from Massachusetts, Mr. Moakley, for his advocacy of this legislation.

You mentioned 800,000 employed out of 22 million. On its face it looks like a very graphic illustration of your point, but on the other side of it, unless there is a closer scrutiny we don't know whether or not that reinforces your point. I think the critical issue here is whether a person that is handicapped is denied employment or discriminated against because of that handicap. There are some individuals who are handicapped and who just resign themselves or really are in fact incapable, and I think that is an important illustration.

But whether it be 1, 1,000, 800,000 or more than that is not the issue. It is the principle that is involved. It is a question of being an American, a human being, and being denied ones birthright. That is one thing this country gives to all. We may not in fact be created equal, no matter what the Preamble says or what Lincoln said, but we are entitled to equal opportunity and that is being denied. It is a sad commentary on the Congress of the United States when you see so many States in the vanguard, who long since have established more humane policy in this area. I am confident that the chairman, Mr. Martinez, who is especially sensitive to this issue, will—well, first I commend him for having the hearing and I am

confident that he will expedite this legislation. I commend you again.

Mr. MOAKLEY. Mr. Chairman, I would also like to commend the honorable gentleman from New York, Mr. Biaggi, for his leadership in his fight for cancer patients to be put in the workplace. I have had many conversations on the floor with the honorable Congressman on his endeavors to do the same type of thing that this legislation would do. He has been in the forefront for many, many years.

Again I would like to congratulate you, Mr. Biaggi, for your leadership that inspired a lot of us to do what we are doing here today.

Mr. BIAGGI. Yes. Thank you.

Mr. MOAKLEY. I think you will find that my bill probably covers people that are discriminated against because of myths and misstatements and half statements and also ignorance.

Mr. MARTINEZ. We are going to turn to Mr. Biaggi, as soon as we are finished with you as a witness, for his statement.

Mr. MOAKLEY. Surely.

Mr. BIAGGI. The gentleman from Montana said something about opening up Title 7, and he was concerned that people may come in offering amendments. Well, that is the hazard we run in the Congress. Every piece of legislation is subjected, in the most part and with rare exception, to an amendatory process. On occasion the Rules Committee reports a bill out with a closed rule, or even more modified, but if the amendments are salutary and enhance the legislation, the Members of the Congress will act accordingly. If they are negative, I'm sure they will meet a just demise, but I don't think, Mr. Chairman, that we should be inhibited for a moment simply because we run the risk of having some amendments offered in the deliberation of this legislation on the House floor.

Mr. MOAKLEY. The gentleman is correct. If I may add, as a member of the Rules Committee, with the exception of tax bills and bills like that that do enjoy a closed rule, most every piece of legislation—unless it is a tax bill of some consequence—is subject to the amendatory process, and germaneness is the only requirement. I'm sure that there might be germane amendments that people may want to offer to this bill, too, but the will of the Congress speaks.

Mr. MARTINEZ. I have to agree with both you and Mr. Biaggi. I have never understood why some fear of the unknown—like President Roosevelt said, the only thing we have to fear is fear itself—would keep us from doing what is right and proceeding under the risk, maybe, but also the sense of responsibility that we have to do something. If we are just in our quest, we can kill those amendments that would adversely affect Title VII and still progressively pass out just amendments. I have to tell you that there may be some work we have to do in getting this bill onto the floor, of convincing people along the way that we can get this bill passed—Mr. Biaggi's and yours—without that great, great fear of what other people might do adversely to Title VII. I think that's where the work lies.

Mr. MOAKLEY. Thank you, Mr. Chairman.

Mr. MARTINEZ. Thank you, Mr. Moakley, for appearing before us this morning.

Mr. MOAKLEY. Thank you very much. Thank the committee.

Mr. MARTINEZ. At this time I would like to turn to Mr. Biaggi for a statement.

[The prepared statement of Hon. John Joseph Moakley follows:]

Prepared Statement of Hon. John Joseph Moakley, a Representative in Congress From the State of Massachusetts

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES, I WOULD LIKE TO THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE THE SUBCOMMITTEE ON BEHALF OF MY BILL WHICH WOULD PROVIDE EQUAL PROTECTION IN EMPLOYMENT TO DISABLED INDIVIDUALS UNDER THE CIVIL RIGHTS ACT OF 1964.

DESPITE STRONG CONGRESSIONAL SUPPORT FOR PROGRAMS TO FURTHER ENHANCE OPPORTUNITIES FOR DISABLED INDIVIDUALS, NO NATIONAL STANDARD HAS BEEN SET TO PROHIBIT DISCRIMINATION AGAINST INDIVIDUALS WHO ARE PHYSICALLY OR MENTALLY CHALLENGED. SECTION 504 OF THE REHABILITATION ACT OF 1973 PROHIBITS DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS IN ANY PROGRAM OR ACTIVITY THAT RECEIVES FEDERAL FINANCIAL ASSISTANCE OR ANY PROGRAM OR ACTIVITY CONDUCTED BY AN EXECUTIVE AGENCY OR U.S. POSTAL SERVICE. WHILE THIS STATUTE IS A SIGNIFICANT STEP TOWARDS ELIMINATING DISCRIMINATION ON THE BASIS OF HANDICAP, IT ONLY AFFECTS A SMALL PORTION OF OUR WORK FORCE. THE STATUTE DOES NOT PROVIDE PROTECTION TO INDIVIDUALS IN THE PRIVATE SECTOR.

MR. CHAIRMAN, I HAVE INTRODUCED H.R. 192 TO ENACT A NATIONWIDE POLICY TO MAKE DISCRIMINATION AGAINST DISABLED INDIVIDUALS AN UNLAWFUL EMPLOYMENT PRACTICE. MY LEGISLATION WOULD AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 TO INCLUDE HANDICAPPED INDIVIDUALS. AS YOU KNOW, THE CIVIL RIGHTS ACT OF 1964 PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATURAL ORIGIN, BUT IT PROVIDES NO PROTECTION FOR DISABLED WORKERS. HANDICAPPED INDIVIDUALS SHARE A HOST OF DEPRIVATIONS VERY SIMILAR TO DEPRIVATIONS DIRECTED TOWARDS MINORITY GROUPS THAT ARE NOW PROTECTED UNDER THE CIVIL RIGHTS ACT. REALIZING THE PARALLELS BETWEEN DISABLED INDIVIDUALS AND MINORITY GROUPS I STRONGLY BELIEVE THE BEST WAY TO COMBAT THE FLAGRANT DISCRIMINATION IS THROUGH A REMEDY WHICH HAS PROVEN SUCCESSFUL IN THE PAST, THE CIVIL RIGHTS ACT OF 1964.

CURRENTLY FORTY FIVE STATES PROHIBIT EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS. OF THE FORTY-FIVE STATES ALL BUT SIX STATES INCORPORATE THIS PROHIBITION IN THEIR CIVIL RIGHTS STATUTE WHICH PROHIBITS JOB DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AND AGE AS WELL AS HANDICAP. MY LEGISLATION TO EXPAND COVERAGE OF TITLE VII BY INCLUDING DISCRIMINATION AGAINST HANDICAPPED PERSONS WOULD ALIGN THE FEDERAL SECTOR TREATMENT OF DISCRIMINATION AGAINST HANDICAPPED PERSONS IN A MANNER SIMILAR TO THE PREVAILING PRACTICE AT THE STATE LEVEL. I WILL INCLUDE FOR THE RECORD A COPY OF A SURVEY OF STATE STATUTES CONCERNING EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS WHICH WAS CONDUCTED BY THE CONGRESSIONAL RESEARCH SERVICE IN MAY OF 1987.

STATISTICAL STUDIES HAVE SHOWN THAT UNEMPLOYMENT RATES AMONG DISABLED INDIVIDUALS ARE EXCEEDINGLY HIGHER THAN THE RATES OF UNEMPLOYMENT FOR NONDISABLED INDIVIDUALS. A STUDY CONDUCTED BY THE PRESIDENT'S COMMISSION ON EMPLOYMENT OF THE HANDICAPPED REVEALS THAT OF THE 22 MILLION DISABLED INDIVIDUALS IN THE UNITED STATES ONLY 800,000 ARE EMPLOYED. ONLY ONE THIRD OF THE BLIND PEOPLE, LESS THAN HALF OF THE PARAPLEGIC PEOPLE, LESS THAN ONE QUARTER OF PEOPLE WITH EPILEPSY AND VERY FEW INDIVIDUALS WITH CEREBRAL PALSY ARE EMPLOYED.

THE STATISTICS ARE VERY DISCOURAGING AND FURTHERMORE, STUDIES HAVE INDICATED THAT MOST HANDICAPPED INDIVIDUALS ARE ABLE TO PERFORM A REGULAR FULL TIME JOB WELL. VERY FEW UNEMPLOYMENT CASES AMONGST HANDICAPPED INDIVIDUALS ARE A RESULT OF THE PERSON'S INNATE LIMITATIONS DUE TO A DISABILITY. I REJECT THE REASONING THAT A DISABLED INDIVIDUAL DOES NOT HAVE THE ABILITY TO COMPLETE THE TASKS AND ASSIGNMENTS FOR A REGULAR JOB. THE STATISTICS CLEARLY DISPROVE THIS MYTH AND THE FACTS PROVE THAT IN MOST CASES A DISABILITY DOES NOT ADVERSELY AFFECT A WORKERS PERFORMANCE.

NUMEROUS STUDIES HAVE INDICATED THAT HANDICAPPED WORKERS WHEN ASSIGNED TO APPROPRIATE POSITIONS, PERFORM AS WELL AS OR BETTER THAN THEIR NONHANDICAPPED CO-WORKER. THE US COMMISSION ON CIVIL RIGHTS STUDIED APPOINTMENTS OF SEVERELY HANDICAPPED WORKERS TO FEDERAL AGENCY JOBS FOR A PERIOD OF TEN YEARS AND CONCLUDED THAT THE WORK RECORD OF THE INDIVIDUALS WAS EXCELLENT. IT IS LUDICROUS THAT INDIVIDUALS WITH DISABILITIES CONTINUE TO BE SUBJECTED TO EMPLOYMENT DISCRIMINATION SINCE REPORTS CLEARLY INDICATE THAT THEY ARE VERY COMPETENT, AND DILIGENT WORKERS.

SOCIETY AND OUR NATION COULD GREATLY BENEFIT FROM INTEGRATING MORE INDIVIDUALS WITH DISABILITIES INTO THE WORKFORCE. THE INCREASED PARTICIPATION OF HANDICAPPED INDIVIDUALS IN THE WORKFORCE COULD YIELD A BILLION DOLLARS ANNUALLY IN INCREASED EMPLOYMENT AND EARNINGS FOR DISABLED INDIVIDUALS AND REMOVE MANY INDIVIDUALS FROM WELFARE PROGRAMS. IN ADDITION TO INCREASING THE GROSS NATIONAL PRODUCT, THE EARNINGS OF HANDICAPPED INDIVIDUALS WOULD RESULT IN ADDITIONAL TAX REVENUES FOR FEDERAL, STATE AND LOCAL GOVERNMENTS. THE CONTRIBUTIONS OF DISABLED WORKERS WOULD CLEARLY BENEFIT OUR ECONOMY.

NOT ONLY WOULD THE ENACTMENT OF THIS LEGISLATION ALLEVIATE THE ECONOMIC BURDEN TO AMERICAN TAXPAYERS, IT WOULD ALSO DO WHAT IS MORALLY CORRECT. MY LEGISLATION WOULD AIM TO ERADICATE THE UNJUSTIFIABLE STIGMAS AND BARRIERS THAT PREVENT MANY MENTALLY AND PHYSICALLY CHALLENGED INDIVIDUALS FROM BECOMING EMPLOYED. SOME EMPLOYERS WILL NOT HIRE QUALIFIED INDIVIDUALS WITH DISABILITIES BECAUSE OF FALSE GENERALIZATIONS AND MISCONCEPTIONS. FEARS OF INCREASED INSURANCE RATES, LOWER JOB PERFORMANCE, JOB STABILITY , AND POOR ATTENDANCE TURN EMPLOYERS AWAY FROM HIRING INDIVIDUALS WITH DISABILITIES. EMPLOYERS IN THE PRIVATE SECTOR WOULD HAVE TO RENOUNCE THEIR BIASES TOWARDS INDIVIDUALS WITH HANDICAPS, JUST LIKE THEY RENOUNCED THEIR BIASES IN 1964 ON THE BASIS OF RACE, COLOR, RELIGION, SEX OR NATURAL ORIGIN, AND HIRE OR NOT HIRE AN INDIVIDUAL ON THE BASIS OF HIS OR HERS QUALIFICATIONS.

DISCRIMINATION TOWARDS DISABLED INDIVIDUALS IS MORALLY WRONG. EACH AND EVERY AMERICAN SHOULD HAVE THE RIGHT TO WORK. THE FLAGRANT DISCRIMINATION IS A WASTE OF HUMAN RESOURCES AND AN ENORMOUS TOLL ON HUMAN DIGNITY. ALL INDIVIDUALS SHOULD BE ACCORDED THE RIGHT TO USE THEIR ABILITY TO THE UTMOST AND NOT BE DEPRIVED OF EMPLOYMENT OPPORTUNITIES SIMPLY BECAUSE THEY HAVE A DISABILITY. BUSINESSES, LABOR ORGANIZATIONS, AND ALL OF SOCIETY MUST STRIVE TO ERADICATE DISCRIMINATION AND THE UNJUSTIFIABLED MISCONCEPTIONS THAT ARE THE ROOT OF THIS DISCRIMINATION.

IT IS VITAL TO REALIZE THAT MOST OF THESE PEOPLE DESIRE EMPLOYMENT BUT DO NOT WORK BECAUSE OF UNJUST AND DISCRIMINATORY HIRING POLICIES. H.R. 192 CALLS FOR HANDICAPPED PERSON TO BE HIRED OR NOT HIRED ON THE BASIS OF THEIR ABILITY TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB.

I INTRODUCED H.R. 192 BECAUSE I STRONGLY BELIEVE THAT THIS LEGISLATION IS VITAL. A COMPREHENSIVE NATIONWIDE LAW NEEDS TO BE ENACTED TO SET A NATIONAL STANDARD TO ERADICATE THE EXISTING DISCRIMINATION TOWARDS INDIVIDUALS WITH DISABILITIES. THIS PASSAGE OF THIS LEGISLATION IS LONG OVERDUE.

I WOULD LIKE TO THANK THE MEMBERS OF THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES FOR HOLDING HEARINGS ON H.R. 192. IN ADDITION I WOULD LIKE TO THANK 54 OF MY COLLEAGUES WHO EXPRESSED THEIR SUPPORT FOR H.R. 192 BY CO-SPONSORING THE BILL.

SURVEY OF STATE STATUTES CONCERNING EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS

The statutes of the fifty states and the District of Columbia were searched for provisions concerning employment discrimination of handicapped persons. A large majority of the states (45) prohibit this type of discrimination. The States of Alabama, Arkansas, Idaho, Mississippi, Tennessee and Delaware do not have a general prohibition for employers within the state although five of these states, i.e. Alabama (§21-7-8), Arkansas (§82-2901), Idaho (§56-707), Mississippi (§25-9-149), and Tennessee (§8-50-103), do set forth a policy to employ handicapped persons in the state service. 1/ The prohibition concerning employment discrimination against handicapped persons is generally accompanied by the limitation that the person's handicap does not interfere with job performance. Some statutes such as in Oregon (§659.425(1)(a)), further provide that "with reasonable accommodation by the employer" [the impairment] does not prevent the performance of the work involved.

Of the forty-five states which prohibit employment discrimination of handicapped persons all but six states incorporate this prohibition in their civil rights statute which prohibits job discrimination on the basis of

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1/ It is interesting to note that Tennessee amended this section in 1986; prior to that year private employers were also prohibited from employment discrimination against handicapped persons.

race, color, religion, nation of origin, sex, and age as well as handicap. These six states, Kentucky, Louisiana, Massachusetts, Michigan, New Jersey, and South Carolina, have set up separate statutes to address this special concern. The method of separate treatment for discrimination of handicapped persons is, in some respects, similar to the method employed by the federal government. Employment discrimination of handicapped persons is prohibited at the federal level by section 504 of the Rehabilitation Act of 1953 (29 USC §794). Section 504 prohibits discrimination against otherwise qualified handicapped individuals solely by reason of their handicap in any program or activity that receives federal financial assistance or in an executive agency or the United States Postal Service. Numerous proposals have been made to incorporate discrimination of handicapped persons in title VII of the Civil Rights Act of 1964.[2/] Title VII, as amended, makes it unlawful for employers, employment agencies and labor organizations to discriminate against employees, applicants or members on the on the basis of race, color, religion, sex or national origin. Expanding coverage of title VII by including discrimination against handicapped persons would align the federal sector treatment of discrimination against handicapped persons in a manner similar to the prevailing practice at the state level.

The employers affected by the anti-discrimination statutes in the forty-five states which prohibit employment discrimination of handicapped persons differ widely. For example, Maine (5 §4553), South Dakota (§20-13-1), Vermont (21 §495d),

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2/ See, e.g. H.R. 192, 100th Cong.; H.R.370, 99th Cong. For further information on this type of proposal see "Proposed Coverage of Handicapped Persons By Title VII of the Civil Rights Act: An Analysis of H.R. 1294 and H.R. 370," CRS Rept. (May 14, 1985).

and Wisconsin ($111.32) define employer as any person who employs one or more persons. In Maryland (Art. 49B §15), Nebraska (§48-1102), Nevada (§613.310), North Carolina (§143-422.2), South Carolina (§1-13-20), Oklahoma (25 §1301), Texas (Art. 5221k §2.01) and Utah (§34-35-2) the definition of employer is any person who employs 15 or more persons.

Of the forty-five states which prohibit employment discrimination of handicapped persons, forty-three set out administrative procedures to remedy violations. Two states, Louisiana and Virginia, provide for civil action in the courts only. Generally, the commissions which are set up to address this issue are instructed, in the statutes, to informally investigate the complaint filed and if it is determined that the allegations are supported by substantial evidence, an effort must be made immediately and confidentially to eliminate the discrimination complained of by conference, conciliation and persuasion. If these efforts fail, a hearing must be held and an order issued stating the findings and an order of "appropriate" relief.

All of the forty-five states which prohibit employment discrimination of handicapped persons also provide a statute allowing judicial review. States differ concerning when this appeal may be made within the framework of the administrative and judicial procedures.

Thirty-three states allow "attorneys' fees" to either private or prevailing parties if such a decision is deemed appropriate. Although Wisconsin does not have a statute allowing attorneys' fees there is a case where attorneys' fees were allowed. The Wisconsin Supreme Court stated that awarding attorneys' fees was fairly implied under the Fair Employment Act in fashioning an appropriate remedy for the victim of discrimination to make prevailing party "whole". (See Watkins v. Labor and Industry Review Com'n, 345 N.W.2d 482, 117 Wis.2d 753 (1984)).

The following table of the statutes of the fifty states and the District of Columbia set out the specific sections of each state statute which prohibits employment discrimination of handicapped persons as well as the sections which specify the administrative and judicial remedies available. The statutory citations of those states which specifically include language which allows attorneys' fees to be awarded are also listed.

M. Ann Wolfe
Paralegal Specialist
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May 31, 1987

SURVEY OF STATE STATUTES CONCERNING
EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Alabama	Ala. Code (1986 Supp.)	NPWF [1/]	NPWF	NPWF	NPWF
Alaska	Alaska Stat. (1986 Supp.)	§ 18.80.220	§ 18.80.100	§ 18.80.135	§ 18.80.130(e)
Arizona	Ariz. Rev. Stat. Ann. (1986-87 Supp.)	§ 41-1463	§ 41.1481 subd. A	§ 41.1481 subd. D	§ 41.1481 subd. J
Arkansas	Ark. Stat. Ann. (1985 Supp.)	NPWF	NPWF	NPWF	NPWF
California	Cal. Govt. Code (1987 Supp.)	§ 12940(a)	§ 12960	§ 12965(b)	§ 12965(b)
Colorado	Colo. Rev. Stat. (1984 Supp.) 1985-1986 Colo. Session Laws	§ 24-34-402	§ 24-34-306	§ 24-34-306(11) and § 24-34-307	NPWF

1/ NPWF - means No Provision Were Found

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Connecticut -	Conn. Gen. Stat. (1987 Supp.)	§ 46a-58 and § 46a-60(a)(1)	§ 46a-82	§ 46a-95(j)	§ 52-251b (suit must be brought under § 46a-58)
Delaware	Del. Code Ann. (1986 Supp.)	NPWF	NPWF	NPWF	NPWF
District of Columbia	D.C. Code Ann. (1986 Supp.)	§ 1-2512	§ 1-2544	§ 1-2554 and § 1-2556	§ 1-2553
Florida	Fla. Stat. Ann. (1987 Supp.)	§ 760.10	§ 760.10(10)	§ 760.10(12)	§ 760.10(13)
Georgia	Ga. Code. Ann. (1986 Supp.)	§ 34-6A-4 and § 45-19-29	§ 45-19-36(b)	§ 34-6A-6(a) and § 45-19-39(a)	§ 34-6A-6(b) and § 45-19-39(c)
Hawaii	Hawaii Rev. Stats. (1982 Supp.) 1982-1986 Hawaii Sess. Laws	§ 378-2	§ 378-4	§ 378-5(d) and § 378-5(e)	§ 378-5(j)

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Idaho	Idaho Code (1986 Supp.)	NPWF	NPWF	NPWF	NPWF
Illinois	Ill. Ann. Stat. (Smith Hurd 1986 Supp.)	68 § 1-102(A)	68 § 7-102(A)	68 § 8-111	68 § 8-108(G)
Indiana	Ind. Code. Ann. (1986)	§ 22-9-1-2	§ 22-9-1-3(o) and § 22-9-1-6(j) and § 22-9-1(k)(1)	§ 22-9-1-6(k)(2) and § 22-9-1-6(n)	NPWF
Iowa	Iowa Code. Ann. (1987 Supp.)	§ 601A.6	§ 601A.15(1)	§ 601A.16 § 601A.17	§ 601A.15(8)(a)(8) and § 601A.16(5)
Kansas	Kan. Stats. Ann. (1985 Supp.)	§ 44-1001 and § 44-1009	§ 44-1005 and § 44-1010	§ 44-1011	NPWF
Kentucky	Ky. Rev. Stats. Ann. (1986 Supp.)	§ 207.150	§ 207.200 and § 207.210	§ 207.230	§207.230(1)

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEE
			ADMINISTRATIVE	JUDICIAL	
Louisiana	La. Civ. Code Ann (1987 Supp.)	46 § 2252 and 46 § 2254(C)	NPWF	46 § 2256(A)	46 § 2256(B) and (C)
Maine	Me. Rev. Stats. Ann. (1986 Supp.)	5 § 4571 and 5 § 4572	5 § 4611	5 § 4612 sub. 4 and 5 § 4621	5 § 4614 and 5 § 4622
Maryland	Md. Ann. Code. (1986)	Art. 49B § 14 and Art. 49B § 16	Art. 49B § 9	Art. 49B§10(d) and Art. 49B § 12	NPWF
Massachusetts	Mass. Gen. Laws Ann. (1986 Supp.)	Chap. 151B § 4 subd. 16	Chap. 151B § 5	Chap. 151B § 6 and Chap. 151B § 9	Chap. 151B § 9
Michigan	Mich. Comp. Laws Ann. (1986 Supp.)	§ 37.1102	§ 37.1605	§ 37.1606 and § 37.1607	§ 37.1606(3)
Minnesota	Minn. Stat. Ann. (1987 Supp.)	§ 363.03 and § 363.12	§ 363.06	§ 363.072 and § 363.14	§ 363.14 subd 3

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Mississippi	Miss. Code. Ann. (1986 Supp.)	NPWF	NPWF	NPWF	NPWF
Missouri	Mo. Ann. Stat. (1987 Supp.)	§ 213.055	§ 213.075	§ 213.085 and § 213.111	§ 213.111(2)
Montana	Mont. Code. Ann. (1983)	§ 49-1-102 and § 49-2-203	§ 49-2-501	§ 49-2-509	§ 49-2-505(4) and § 49-2-509(3)
Nebraska	Neb. Rev. Stat. (1986 Supp.)	§ 48-1101 and § 48-1104	§ 48-1117 and § 48-1118	§ 48-1120	§ 48-1120(6)
Nevada	Nev. Rev. Stat. (1986)	§ 613.330	§ 613.405	§ 613.420	NPWF
New Hampshire	N.H. Rev. Stat. Ann. (1986 Supp.)	§ 354-A:1 and § 354-A:2 § 354-A:8	§ 354-A:9	§ 354-A:10	NPWF

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
New Jersey	N.J. Stat. Ann. (1986-87 Supp.)	§ 10:5-4.1	§ 10:5-13	§ 10:5-13	§ 10:5-27.1
New Mexico	N.M. Stat. Ann. (1985 Supp.) 1986 N.M. Laws	§ 28-1-7	§ 28-1-10	§ 28-1-13	§ 28-1-11 sub. F
New York	N.Y. Executive Law Consol. (1987 Supp.)	§ 296	§ 297	§ 297(9) and § 298	NPWF
North Carolina	N.C. Gen. Stat. (1985 Supp.)	§ 143-422.2 and § 168A-2 and § 168A-5	§ 143-422.3	§ 168A-11	§ 168A-11(d)
North Dakota	N.D. Cent. Code. (1985 Supp.)	§ 14-02.4-03	§ 14-02.4-21	§ 14-02.4-19	§ 14-02.4-20
Ohio	Ohio Rev. Ann. (1986 Supp.)	§ 4112.02	§ 4112.05	§ 4112.06	NPWF

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Oklahoma	Okla. Stat. Ann. (1987 Supp.)	25 § 1302	25 § 1502	25 § 1506	25 § 1505(c)(8) and 25 § 1506(b)
Oregon	Or. Rev. Stat. (1985)	§ 659.425	§ 659.040 and § 659.435	§ 659.085 and § 659.095	§ 659.121(1)
Pennsylvania	Pa. Cons. Stat. Ann. (1986 Supp.)	43 § 955	43 § 959	43 § 960	NFWF
Rhode Island	R.I. Gen. Laws (1986)	28-5-7	§ 28-5-7	§ 28-5-24.1 and § 28-5-28	§ 28-5-24
South Carolina	S.C. Code. Ann. (1986 Supp.)	§ 43-33-520 and § 43-33-530	§ 43-33-550 and § 1-13-90	§ 43-33-540 and § 1-13-90(d)(8)	§ 43-33-540
Tennessee	Tenn. Code. Ann. (1986 Supp.)	NFWF	NFWF	NFWF	NFWF

STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Utah	Utah Code. Ann. (1986 Supp.)	§ 34-35-6	§ 34-35-7.1	§ 34-35-8	§ 34-35-7.1(12)
Vermont	Vt. Stat. Ann. (1984 Supp.)	21 § 495	21 § 495b and 9 § 2460	21 § 495b(b)	21 § 495b(b)
Virginia	Va. Code. (1986 Supp.)	§ 51.01-41	NFWF	§ 51.01-46	§ 51.01-46
Washington	Wash. Rev. Code. Ann. (1987)	§ 49.60.010 and § 49.60.030	§ 49.60.230	§ 49.60.030(2), § 49.60.260 and § 49.60.270	§ 49.60.030(2)
West Virginia	W. Va. Code. (1987)	§ 5-11-2 and § 5-11-9	§ 5-11-10	§ 5-11-11 and § 5-11-13	§ 5-11-13(c)
Wisconsin	Wis. Stat. Ann. (1986 Supp.)	§ 111.31 § 111.321 and § 111.322	§ 111.39	§ 111.395	NFWF 2/

2/ See Watkins v. Labor and Industry Review Com'n, 345 N.W. 2d 482, 117 Wis. 2d 753 (1984). Implication of the Fair Employment Act, to make prevailing party "whole," is to allow the awarding of reasonable attorney's fees.

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STATE		PROHIBITS EMPLOYMENT DISCRIMINATION OF HANDICAPPED PERSONS	PROCEDURES TO REMEDY VIOLATIONS		PROVIDES FOR ATTORNEYS' FEES
			ADMINISTRATIVE	JUDICIAL	
Wyoming	Wyo. Stat. (1985 Supp.)	§ 27-9-105	§ 27-9-106	§ 27-9-107 and § 27-9-108	NPWF

M. Ann Wolfe
Paralegal Specialist
American Law Division
May 31, 1987

STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BIAGGI. Thank you, Mr. Chairman. As I said before, I would like to commend you on your leadership, not simply because of the expeditious manner in which you have treated this legislation, but compassion for the rights of an estimated 5 million cancer survivors in this Nation. This is the second successive Congress that you have conducted hearings on legislation that I have authored to outlaw employment discrimination against cancer survivors.

Today your subcommittee will discuss my new bill, H.R. 1546, the Cancer Patient Employment Rights Act, which has been cosponsored by 94 Members of this House. I hope we may be able to go forward from this point and get some affirmative action on the bill.

Let's walk through this process. It is difficult to comprehend the horror and fear an individual experiences when he or she is first diagnosed as having cancer. That person knows all too well that the toughest battle of his or her life has commenced. Thousands will fight the battle against this dreadful disease and will win. Cancer no longer carries the death sentence it once did—at least not medically. Unfortunately, even if the medical consequences are favorable, the diagnosis of cancer still translates into a type of death sentence for the person seeking to maintain their position, be rehired, or just plain find employment.

My legislation has as its main objective to dispel, if not repudiate, the myth about the cancer survivor's role in the workplace. The very fact that we have an increasing number of cancer survivors is a testimonial to the remarkable progress that researchers and those in the medical profession have made in recent years. One out of every two persons diagnosed with cancer will be cured. The fact that more than 25 percent or close to 1 million cancer survivors still encounter discrimination in the workplace after being cured is testimony to the remarkable lack of progress we as a society have made in permitting the full recovery of cancer survivors through our full acceptance of their value.

Discrimination in the workplace shows itself in many ways to the cancer survivors. Some individuals have been demoted to positions of less authority, responsibility and salary. Others have had their medical insurance benefits drastically cut back or even dropped in total. Some cancer survivors have known the degradation of being physically moved to an area in the office away from other employees, while still others have been fired outright from their positions for no reason other than that they have a history of cancer. Lastly, we might never know the true figure of how many individuals are never given the opportunity to work at all because of a cancer history as a child or a young adult.

I believe that the time is long overdue for us to address this issue on the Federal level. It is reported by the year 1990 one out of every 1,000 children reaching the age of 20 will be a childhood survivor of the disease. If we as a Nation continue to ignore the fact that so many Americans are being discriminated against, many of our children will never have the opportunity to aspire to successful, rewarding careers. It is difficult to fathom that we will contin-

ue to blatantly discriminate against such a large portion of our population.

I offer my legislation as a pioneering step forward in this developing area of national concern. Under my bill, an individual will have the right to bring civil action against an employer, should the employer engage in any of the following practices which would be deemed unlawful under the proposal: fail or refuse to hire, deny a promotion or fire an individual because of a cancer history; segregate or classify employees in any way because of a cancer history; administer and act upon the results of an ability test, if the test is designed or used to discriminate based on a history of cancer; retaliate against an employee if the employee questions the employer's practices; or fail to provide reasonable accommodations for an employee to fulfill job requirements.

One should note that H.R. 1546 is not only designed as a punitive bill. Its other purpose is to help enlighten and educate our Nation about the value of cancer survivors in the workplace. My bill does not provide special treatment for cancer survivors. It does provide for equal treatment in the workplace for these individuals. These survivors are entitled to and should be granted the same protection under the law as every other American wishing to work.

The cancer survivor has shown remarkable strength and courage. They are individuals who have demonstrated an ability to fight difficult battles, yet without passage of legislation such as mine, they will be fighting the battle against employment discrimination with one hand tied behind their back. It is my hope that H.R. 1546 will enlighten those who fear the word cancer and, as such, the cancer survivor—and increase public awareness of the employability of these courageous individuals.

On a personal note, I have found this issue to be one of the most critical that I have dealt with during my 18 and one-half years in the Congress. I have been awestruck by cancer survivors I have met during the 3 years I have been involved in this effort. They are men and women, young and old, rich and poor, black and white, with a tremendous sense of purpose in their lives. They come before this Congress with a simple plea: Give us a fair shot to fully relish our triumph over cancer. The victory over cancer is a hollow one if it does not include full employment rights. Our society displays great hypocrisy if we work so diligently to find a cure for cancer, only to turn around and allow employment discrimination against those people who have been cured to continue.

At this point I would ask unanimous consent that the written statement of Richard A. Kosinski, a cancer survivor, and happily one who fought and won the battle of discrimination in the workplace and who is here today, be included in the report. Although he had a Master's degree and solid work experience, Mr. Kosinski was unable to convince any employer of his ability to work and in fact to excel in a position. For the past 2 years he has been employed at the Niles Township Sheltered Workshop in Skokie, Illinois. Like most cancer survivors, Richard Kosinski reports to work with more regularity than his co-workers. Cancer survivors want to work, and they need to be productive. Let me specifically state that he is in Washington using his earned, much-deserved vacation time, and I

am sure that the members of the subcommittee will find Mr. Kosinski's testimony inspiring.

Lastly, I would request unanimous consent that the written statement of Susan Weintraub Nessim and that statement submitted by CANCERCARE, Inc., be included in the report as well. A victim of employment discrimination based on her cancer history, Susan is the founder of CANCERVIVE, a nonprofit organization which is dedicated to educating the public, the medical profession and government about the obstacles facing former cancer patients. CANCERCARE, Inc., is a national organization which assists the cancer patient and his or her family.

Mr. Chairman, I again thank you for having the hearing and giving me the opportunity to discuss this terribly important subject.

Mr. MARTINEZ. If there is no objection, Mr. Biaggi's request will be agreed to.

[The prepared statement of Hon. Mario Biaggi follows:]

PREPARED STATEMENT OF THE HONORABLE MARIO BIAGGI, A REPRESENTATIV.

IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, may I first express my appreciation to you and the members of the Subcommittee on Employment Opportunities, for having scheduled this hearing today, on H.R. 1546; the Cancer Patient's Employment Rights Act. In addition, I would like to personally thank you for having cosponsored this legislation, which I am happy to report enjoys bi-partisan support, having been co-sponsored by 94 members of the House.

Cancer — it's a word which strikes fear in the hearts of all of us. It is difficult to comprehend the terror an individual experiences when he or she is first diagnosed as having cancer. That person knows all too well that the toughest battle of his/her life has just commenced. However, over the past several years, the news has been more and more encouraging. Medical breakthroughs have made it possible for more than 50% of cancer patients to be cured. Imagine, one out of every two people who hear those frightening words from their physician, will later hear that they are cured, free from the disease, and able to return to a normal life. Thousands are fighting the battle against this dreadful disease and winning. Cancer is no longer the death sentence it once was; at least not medically.

The problem is that for many of our cancer survivors, a "normal life" means one of degrading discrimination in the workplace. At a time when we as a nation have declared that cancer research is a medical priority, it is an outrage that almost 1 million cancer survivors have already had to deal with employment discrimination, and another 5 million Americans with a history of cancer face the very real threat of being discriminated against when they return to work or seek employment. These figures are staggering and the truth of the matter is that with the headway we are making against cancer, the situation can only get worse. The medical establishment estimates that 66 million Americans will eventually develop cancer; one out of every four of us will contact this hideous disease. The need for this legislation is apparent and the time is now.

Discrimination in the workplace for the cancer survivor can be either subtle or overt, ranging from employment denial to wage reduction, the cutback or exclusion from medical benefits, promotion denial and in some cases, termination from the position. The discrimination is broad-based; it has no sexual preference and strikes both blue collar and white collar employees. It knows no age restriction. While individuals employed with the same company for many years have been discriminated against by co-workers and supervisors, the real disgrace is that childhood survivors of the disease are being denied admission to schools and the opportunity to embark on any type of career.

Take for instance the person who suffered frum childhood leukemia. Although 65% of all such patients are able to lead a normal life after treatment, many schools deny them entry simply based on a cancer history. What chance does this individual have to aspire to a rewarding, fulfilling career with any hope of realizing this dream?

One ray of hope has been the decision of the Department of Defense to reevaluate it's long standing policy with regard to those cancer survivors seeking entry into the military. As of March 31, 1986, Section XX of the DoD Directive 6130.3 permits consideration of individuals who have remained disease-free and off treatment for childhood cancers, for a period of five years. At long last, at least one sector of our society realizes that cancer can be cured and that cancer survivors can make a meaningful contribution to our nation.

H.R. 1546 does not grant preferential treatment to cancer survivors, nor does it make it mandatory that an individual be hired based solely on his or her victory over the disease. This legislation allows an individual who has been discriminated against in the workplace because of his/her cancer history, to bring civil action against the employer. The practices which would be deemed as unlawful include:

1. Failure or refusal to hire, or deny a promotion or fire an individual because of a cancer history.

2. Segregation or classification of employees in any way because of a history of cancer.

3. To administer and act upon the results of an ability test if the test is designed or used to discriminate because of a cancer history.

4. Retaliation against an employee if the employee participates in an investigation or hearing regarding the employer's practices.

5. Failure to provide reasonable accommodations for an employee to fulfill the essential job requirements.

H.R. 1546 is also introduced in the hope that we will be able to enlighten and educate our nation about the value of cancer survivors in the workplace. These are hard-working, dedicated individuals who have shown tremendous stamina and enviable courage.

After the long battle of fighting their disease, cancer patients are perhaps better equipped to take on the rigors of full-time employment than most employers believe. Studies show that employees with cancer histories are generally more responsible, hardworking and productive. Between 1957 and 1971, the Metropolitan Life Insurance Company tracked 74 of its own employees with a cancer history, or employees who developed cancer while working with the company. It was found that:

1. The turnover rate among employees with a cancer history was no higher than the rate of people cancer-free.

2. No employee in the cancer group was discharged for absenteeism or poor performance.

3. Only 3% of the cancer employees were ever placed on disability.

The results of this study, conducted by a major insurance company should prove once and for all that employment discrimation based on a cancer history is more than simply unjustified, but blantantly hypocritical in light of the billions of dollars spent each year on cancer research.

On a personal note, I have found this issue to be one of the most critical and necessary that I have dealt with during my 18 years in the Congress. I also know first hand the value of an individual who has battled cancer and has won. My Executive Secretary in my district office, Ray Levine, is a cancer survivor. I have seen this courageous woman deal twice with the news that cancer had been found. Through two major operations and hundreds of hours of treatment, she never let it be known just how much she might have been suffering. She reported to work, even during the most intense phases of her treatment and continues, as she has since January 1969 to be an important, vital member of my staff. How foolish to think that simply because she has a history of cancer, her dedication and productivity would be adversely affected. Ray Levine is truly an inspiration to all of us, and believe me there at times when my office just wouldn't operate effectively without her.

In summation, I would like to commend those who have come here to testify today and to share with us their experiences. With what we will learn at this hearing, it will be difficult to argue that cancer survivors are not being discriminated against in the workplace and by failing to pass legislation to outlaw these disgraceful practices, we as a nation simply condone such policies. H.R. 1546 is necessary if the cancer survivor is to know "total victory" over his/her disease and the prejudice he/she faces in the workplace.

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[The prepared statement of Richard A. Kosinski follows:]

PREPARED STATEMENT OF RICHARD A. KOSINSKI, NILES TOWNSHIP SHELTERED WORKSHOP, SKOKIE, IL

In 1980 I began an education which would forever change the way I would view myself and the rest of society. In that year I developed teratocarcinoma of the testes. I suffered the loss of my left testicle and, a few months later, the lymph nodes on the inside of my spine. The second surgery was followed by a two-year protocol of combination chemotherapy. During this period, I discovered I had fewer friends than I thought. People just stopped calling or coming to visit. I viewed the conclusion of my chemotherapy with a great deal of ambivalence. My personal war against cancer was, "knock on wood", over. I had been victorious over the "Big C". But, what was next?

For some reason I never quite understood the effects of discrimination. I was, after all, an educated, middle-class, white male. I expected to have, at least, an even shot at anything out there. Boy, was I in for a surprise! At first I thought that survival from cancer meant I was someone special. At first, I chose not to conceal my health history. I wanted people to know what I had experienced because, for me, it was meaningful. Unfortunately, it seemed that many people, especially prospective employers, did not see it that way.

During the next three years, I had submitted some 200 resumes and applications for employment. I had a solid record as a good development executive with a chain of consecutive record years behind me. I also had a masters degree. This did not seem to matter. I suffered a two-year gap in my employment history which was due to treatment for cancer.

I had a few interviews. The people I spoke with seemed impressed by my qualifications. My previous supervisors had provided good references. Very often they smiled when I disclosed my experience with cancer. Some congratulated me on my victory. However, there was either someone more qualified for the job; or, I would not receive a callback Even when I pursued the interviewer with repeated calls, the person was not available and did not return my calls. Please understand, no one ever said I was not being hired because of my cancer history. I would have a difficult time proving discrimination by anything that was said. However, with time you get to know the look and the tone of voice which says, "Yeah, life is tough; but, it's not my problem!"

Remember, I was a man living at a time when competition was key and productivity, God.

I had lost half of what physically constitutes masculinity. Many people I encountered did not believe that discrimination against cancer patients existed. They just considered me lazy and worthless. Truthfully, I began to feel that way myself. I put on weight and neglected to shave. My desire for sex left me completely. I thought about suicide twice. The second time I had even worked out the plans.

After some severe psychological and emotional reverses, I slowly pasted the pieces of my shattered life together. The anti-depressant medication I was taking had so increased my appetite that I weighed in at 200+ pounds! At the suggestion of one of the few good friends I had left, I applied and was interviewed by Richard M. Haar, Executive Director of the Niles Township Sheltered Workshop, a private social service agency serving the elderly and handicapped. I told Richard that I had experienced the same feelings of rejection and alienation as many of his clients. Therefore, I could understand his "product" better than any other candidate. He gave me the job!

Having a job is a great deal more than receiving a paycheck. It is setting the alarm, getting up, washing, eating breakfast, getting dressed, and having something to look forward to each day. It adds structure and meaning to a person's life. It restores confidence and self-esteem.

I am forty pounds lighter now. I have a new group of friends and my greatest joy comes from being with them. After experiencing rejection from women because of my cancer history, I have started dating again. Suffice it to say my interest in sex has returned.

One of the things that kept me going was the friendship I developed with Representative Biaggi who corresponded with me during some of the tough times. With the information I received from him and the material I gathered from other sources, I learned that the problem of discrimination was not unique to me. It was experienced by at least 25% of all my fellow cancer survivors. Knowing this gave me the courage to "go public" with my story.

Going public was a graduate education on the ignorance of the general public concerning the survival of cancer patients. I did a press conference for the Illinois Division of the American Cancer Society in December of 86. A reporter for WBEZ Public Radio in Chicago introduced me as someone who "claims" to be cured from testicular cancer and referred to cancer as a "terminal illness". We have much to do in the area of public education.

I have been with the Niles Township Sheltered Workshop for two years. I have taken fewer days off than any of my co-workers. Not only have I refrained from taking sick days, I have not even taken all my vacation time from last year. I am using vacation time to be here for this hearing. When I do see a physician or dentist, it is on Saturdays or after work. None of the popular misconceptions about hiring cancer survivors have applied in my case.

In fact, my experience with cancer has helped in the performance of my job. I understand the need all people have to feel useful. We all want the same things from life; work, good times, companionship, and love. My story has been told many times in funding proposals to foundations and corporations, as Ambassador of Mercy for United Way, as member of the Service and Rehabilitation Committee of NorthShore American Cancer Society, and the various ministries I have embraced. Survival from cancer has given me a unique opportunity for personal growth.

However, many of my brothers and sisters will not have a boss like Richard Haar to give them a break. Some with childhood cancers may be haunted into adulthood by their health histories. It is very clear to me that public attitudes have not kept pace with the advances in medicine. Legislation has always preceded a change in social attitudes about any minority. In Illinois, a cancer history is now considered a handicap and so we are afforded the same protection from discrimination as any other handicapped person. Illinois has also passed a Comprehensive Health Insurance Plan to give us access to major medical coverage.

But, public awareness that cancer need be only a temporary condition is not reflected in the fact that, in Illinois, we must be regarded as handicapped to be guaranteed equal rights. We are, in fact, a minority and, a very large one at that. We need protection at the Federal level which guarantees us the same legal recourse as women,

blacks, Hispanics, the handicapped, and other minorities. It is shocking to me that this legislation did not receive more attention when it was introduced in the 98th Congress back in '84. I saw no "letters to the editor" from prominent people in the cancer research field advocating survivors' rights. Some 66 million Americans have experienced the horror of cancer in their lives; yet, we have spent so much time and money focusing on cures, that we have abandoned those who validate our efforts.

We need to educate employers, care-givers, and the public at large concerning the truth about cancer survival. Most importantly, we need to pass H.R. 1546 as an important first step in insuring our right to remain productive partners in our nation's economic progress.

Respectfully submitted by Richard A. Rosinski 6/17/87

[The prepared statements of Ms. Nessim and CANCERCARE, Inc., appear at the end of the hearing.]

Mr. MARTINEZ. Mr. Gunderson, do you have a statement?

Mr. GUNDERSON. No.

Mr. MARTINEZ. Mr. Jontz?

Mr. JONTZ. Mr. Chairman, let me simply take this opportunity to commend the gentleman from New York, Mr. Biaggi, on introducing this important legislation, and commend you on holding this hearing, and I am looking forward to hearing the witnesses this morning.

Mr. MARTINEZ. Thank you, Mr. Jontz.

With that, we will call the first panel, which consists of Barbara Hoffman, Coalition for Cancer Survivorship, a cancer patients' employment rights program; Grace Monaco, with White, Fine & Verville; and Tim Calonita, a cancer survivor, Mineola, New York. We will begin the testimony with Barbara Hoffman.

STATEMENT OF BARBARA HOFFMAN, ESQ., COALITION FOR CANCER SURVIVORSHIP

Ms. HOFFMAN. Thank you. Mr. Chairman and members of the subcommittee, my name is Barbara Hoffman. I am a disability rights attorney and a member of the board of directors of the National Coalition for Cancer Survivorship. The National Coalition for Cancer Survivorship is a national clearinghouse for grassroots organizations and individual survivors, engaged in community development, public education, and legal and psychosocial research designed to enhance the quality of life of the growing number of cancer survivors.

My testimony today is on behalf of the more than 5 million cancer survivors in the United States, more than 3 million of whom have won their fight against cancer. My definition of a cancer survivor attaches at the time of diagnosis.

The Cancer Patients' Employment Rights Act, H.R. 1546, will bring social, political, and economic practice in line with medical fact. At least 25 percent of all individuals with a cancer history, more than 1 million people, experience some form of employment discrimination solely because of their cancer history. This disparate treatment includes dismissal, denial of new jobs, demotions, loss of benefits such as insurance, undesirable transfers, isolation and hostility in the workplace, and mandatory medical examinations unrelated to job performance.

Why, after struggling with such a grueling illness, do at least 1 million people face invidious discrimination? Because the general public still believes three myths about cancer.

Myth number one is that cancer is a death sentence. The impact of this myth is that employers are hesitant to invest in an individual they believe will die imminently. Insurance companies skyrocket rates or refuse to insure at all. Banks deny loans, and society disallows long-term planning on the assumption of a short-term life.

The fact is, approximately half of all individuals in the United States diagnosed with cancer this year will overcome the disease. For individuals under the age of 55, those most likely to need em-

ployment, survival rates are even higher, with rates of over 80 and 90 percent for some types of cancer. There is life after cancer. It should be a life full of quality and equal opportunity, not one of narrow prejudices and stunted dreams.

The second myth is that cancer is contagious. The impact of this myth is that fellow workers physically and emotionally isolate those with cancer, and employers succumb to co-workers' demands to fire or transfer cancer survivors.

The fact is that cancer is not contagious. It cannot be transferred by cough, sneeze, casual touch, sex, or shared workplace.

The third myth is that cancer survivors are an unproductive drain on the economy. The impact of this myth is that the employed are fired, demoted and denied benefits. The unemployed are faced with remaining so or considering lying about their medical history, and the underemployed are drained of their self-esteem.

The fact is, decades of studies have confirmed that cancer survivors have the same productivity rates as other workers. Eighty percent return to work after diagnosis. Millions of individuals remain as productive after a cancer diagnosis as they had been before. They are gold medal Olympic athletes, authors, actors, ambassadors, our current President, and Members of the 100th Congress. They are you, your neighbor, spouse, associate and child.

Public and professional education will help dispel these myths, but because these myths are uniquely associated with cancer and because cancer survivors face widespread discrimination not faced by individuals with other medical conditions, laws specifically designed to prohibit cancer-based discrimination are needed to provide remedies, or discrimination will inevitably persist.

The Cancer Patients' Employment Rights Act is necessary because there currently exists no uniform prohibition against cancer-based discrimination. The Federal Rehabilitation Act of 1973 applies only to certain recipients of Federal funds and prohibits discrimination based on handicap, a term which does not encompass many cancer survivors. Coverage of State discrimination laws varies widely, with only a few States such as California expressly prohibiting cancer-based discrimination. Because discrimination against qualified cancer survivors is a national problem, it requires a Federal solution.

H.R. 1546 is the most appropriate solution. This bill requires that all qualified workers be afforded equal job opportunities, by explicitly prohibiting discrimination based on cancer history. Because this bill will require employers to evaluate employees according to their individual qualifications instead of their often irrelevant medical histories, it will eliminate medical exams that are unrelated to job performance.

Many personnel policies prohibit employment of individuals within 5 years of treatment or with any cancer history at all. H.R. 1546 will prohibit policies such as these which ignore an individual's actual abilities and treat all cancer survivors as criminals, forced to serve a 5 or more year sentence of unemployment and social ostracism. H.R. 1546 fairly and appropriately balances the rights of employers to hire only qualified workers with the rights of cancer survivors to be considered according to their individual qualifications, and not destructive mythology.

By increasing employment opportunities for all qualified individuals, H.R. 1546 will increase the number of wage-earning taxpayers and decrease the number of people needlessly receiving disability and unemployment benefits. The Cancer Patients' Employment Rights Act will generate more accurate information about the survivability of cancer and will promote the full rehabilitation and integration into society of the more than 5 million individuals with a cancer history.

More than 100 years ago, President Grover Cleveland concealed his surgery for mouth cancer by telling the public he needed a little dental work. Today, although the President of the United States can disclose his cancer history without fearing dismissal or national panic, the average employee still must remain in the closet for fear of financially and emotionally draining discrimination. Despite dramatic gains in cancer survivorship, this irrational, cruel behavior is still commonplace today.

One year ago, the 99th Congress and the National Conference of Mayors passed resolutions recognizing the scope of cancer-based discrimination and expressing the need for a legislative solution. H.R. 1546 is that solution. I urge you to give it your full support.

Mr. Chairman, I commend you for holding this hearing and I appreciate the opportunity to testify in support of this important legislation.

[The prepared statement of Barbara Hoffman follows:]

Prepared Statement of Barbara Hoffman, Esq., National Coalition for Cancer Survivorship, Philadelphia, PA

Mr. Chairman and members of the Subcommittee, my name is Barbara Hoffman. I am a disability rights attorney and a member of the Board of Directors of the National Coalition for Cancer Survivorship.

The National Coalition for Cancer Survivorship is a national clearinghouse for grassroots organizations and individual survivors engaged in community development, public education, and legal and psychosocial research designed to enhance the quality of life of the growing number of cancer survivors.[1]

My testimony today is on behalf of the more than five million cancer survivors in the United States, more than three million of whom have won their fight against cancer.[2] My definition of a cancer survivor attaches at the time of diagnosis.

The Cancer Patients' Employment Rights Act, H.R. 1546, will bring social, political and economic practice in line with medical fact.

At least twenty-five percent of all individuals with a cancer history, more than one million people, experience some form of employment discrimination solely because of their medical history.[3] This disparate treatment includes dismissal, denial of new jobs, demotions, loss of benefits such as insurance, undesirable transfers, isolation and hostility in the workplace, and mandatory medical examinations unrelated to job performance.[4]

Why, after struggling with such a grueling illness, do at least one million people face invidious discrimination? Because the general public still believes three myths about cancer.

Myth number one is that cancer is a death sentence.[5] The impact of this myth is that employers are hesitant to invest in an individual they believe will die imminently, insurance companies sky rocket rates or refuse to insure at all, banks deny loans and society disallows long-term planning on the assumption of a short-term life.

The fact is approximately half of all individuals in the United States diagnosed with cancer this year will overcome the disease.[6] For individuals under the age of 55 -- those most likely to need employment -- survival rates are even higher, with rates of over 80 and 90 percent for some types of cancer.[7]

There is life after cancer. It should be a full life of quality and equal opportunities, not one of narrow prejudices and stunted dreams.

The second myth is that cancer is contagious. The impact of this myth is that fellow workers physically and emotionally isolate those with cancer and employers succumb to co-workers' demands to fire or transfer cancer survivors. The fact is cancer is not contagious.[8] It cannot be transferred by cough, sneeze, casual touch, sex or shared workplace.

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The fact is, decades of studies have confirmed that cancer survivors have the same productivity rates as other workers.[9] Eighty percent return to work after diagnosis.[10] Millions of individuals remain as productive after a cancer diagnosis as they had been before. They are gold medal Olympic athletes, authors, actors, ambassadors, our current President and members of the 100th Congress. They are you, your neighbor, spouse, associate and child.

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H.R. 1546 is the most appropriate solution. This bill requires that all qualified workers be afforded equal job opportunities by explicitly prohibiting discrimination based on cancer history. Because this bill will require employers to evaluate employees according to their individual qualifications instead of their often irrelevant medical histories, it will eliminate medical exams that are unrelated to job performance.

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survivability of cancer and will promote the full rehabilitation and integration into society of the more than five million individuals with a cancer history.

Nearly 100 years ago, President Grover Cleveland concealed his surgery for mouth cancer by telling the public he needed a little dental work. Today, although the President of the United States can disclose his cancer history without fearing dismissal or national panic, the average employee still must remain in the closet for fear of financially and emotionally draining discrimination. Despite dramatic gains in cancer survivorship, this irrational, cruel behavior is still commonplace today.

One year ago, the 99th Congress and the National Conference of Mayors passed resolutions recognizing the scope of cancer based discrimination and expressing the need for a legislative solution. H.R. 1546 is that solution. I urge you to give it your full support.

Mr. Chairman, I commend you for holding this hearing and appreciate the opportunity to testify in support of this important legislation.

1. *See* attachment.

2. American Cancer Society, *1987 Facts and Figures*.

3. *See Employment Discrimination Against Cancer Victims and the Handicapped: Hearing on H.R. 370 and H.R. 1294 The Cancer Patients Employment Rights Act. Before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor*, 99th Cong., 1st sess. 2-4 (1985) [*hereinafter* cited as *House Hearing on H.R. 1294*]. The 25% figure is a conservative estimate. *E.g.*, a five-year study of the work experiences of 344 workers and youths with cancer histories found that 54% of white-collar respondents described work problems that they attributed to cancer, 84% of the blue-collar respondents identified such work problems and 51% of the youth reported discrimination at work or school. F. Feldman, *Work and Cancer Health Histories* (University of Southern California, Los Angeles: 1982), summarized in the proceedings of the 1982 Western States Conference on Cancer Rehabilitation in San Francisco. A Stanford University study of 403 Hodgkin's disease survivors found that 43% of the survivors experienced difficulties at work that attributed to their cancer histories. P. Fobair, R. Hoppe, J. Bloom, R. Cox, A. Varghese and D. Spiegel, "Psychological Problems Among Survivors of Hodgkin's Disease", *Journal of Clinical Oncology*, May, 1986. A study by the California Division of the American Cancer Society found that most California corporations and governmental agencies discriminate against job applicants with a history of cancer for a period of three to ten years after treatment. Hoffman, "Employment Discrimination Based on Cancer History: The Need for Federal Legislation," 59 *Temple Law Quarterly* 1,3 (Spring, 1986), *hereinafter* "Hoffman."

4. *See* Hoffman, supra at note 3, at 3, note 11.

5. *House Hearing on H.R. 1294, supra* note 3, at 16 (statement of Robert J. McKenna, M.D.). Until present myths about cancer are dispelled, discrimination based on cancer history will be inherent in society. Author Susan Sontag comments that cancer has become the tuberculosis of today:

> As long as a particular disease is treated as an evil, invincible predator, not just a disease, most people with cancer will indeed be demoralized by learning what disease they have. The solution is hardly to stop telling cancer patients the truth, but to rectify the conception of the disease, to de-mythicize it.
>
> When, not so many decades ago, learning that one had TB was tantamount to hearing a sentence of death -- as today, in the popular imagination, cancer equals death -- it was common to conceal the identity of their disease from tuberculars and, after they died, from their children.... Conventions of concealment with cancer are even more strenuous. In France and Italy it is still the rule for doctors to communicate a cancer diagnosis to the patient's family but not to the patient; doctors consider that the truth will be intolerable to all but exceptionally mature and intelligent patients.... Since getting cancer can be a scandal that jeopardizes one's love life, one's chance of promotion, even one's job, patients who know what they have tend to be extremely

prudish, if not outright secretive, about their disease.

S. Sontag, Illness as Metaphor 7-8 (New York: 1977).

Sontag also writes that modern medical advances will help improve cancer's connotations: "[C]ancer will be partly demythicized; and it may then be possible to compare something to a cancer without implying either a fatalistic diagnosis or a rousing call to fight by any means whatever a lethal, insidious enemy." *Id.* at 84. Cancer will no longer be viewed as a "demonic pregnancy" or serve as the standard euphemism in obituaries for "died after a long illness." *Id.* at 14.

6. American Cancer Society, *1987 Facts and Figures.*

7. *Id.*

8. *See generally*, National Institute of Health, U.S. Dept. of Health and Human Services, Pub. No. 84-2612, Cancer Prevention Research Summary: Viruses 4 (1984) (viral infections that increase risk of cancer may be contagious, but cancer itself is not contagious).

9. For example, a 1960's survey by the Bell Telephone System of more than 900,000 Bell employees found that each year 1.67 employees per thousand had seven or more days of illness related to malignancy. Of those employed at the time of their cancer diagnosis, 81.2% returned to work. Only 4.1% were permanently disabled while 14.7% died of cancer before returning to work. Cancer survival rates have increased considerably in the two decades following the Bell survey. *See* Fobair, *supra* note 3, at 1-2, for a brief discussion of the Bell survey.

A study by the Metropolitan Life Insurance Company, conducted between 1959 and 1972, concluded that the work performance of people who were treated for cancer differs little from that of others hired at the same age for similar assignments. When compared with other employees of the same age, the turnover, absence, and work performance of cancer patients were satisfactory. In addition, no employees hired after treatment for cancer died during the observation period. Metropolitan Life Insurance Co., Statistical Bulletin 5-6 (1973).

10. H. Crothers, "Local Problems/Local Solutions," *Workshop on Employment, Insurance and the Cancer Patient*, American Cancer Society (New Orleans: 1986).

11. United States Conference of Mayors, June, 1986, Resolution No. 21; United States House Concurrent Resolution No. 321 (unanimously passed both the House of Representatives and the Senate in September, 1986).

National Coalition for Cancer Survivorship

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Organizational Memberships

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Oncology Nursing Society

THE IMPORTANCE OF A NATIONAL COORDINATING EFFORT

In response to the significant special needs of a burgeoning cancer survivor population, independent and unrelated support organizations have arisen in various communities across the country. Although most of those organizations have been in existence less than ten years, many of their members are already developing high levels of expertise in working with support groups and various aspects of survivorship. Many groups are led by individuals who are themselves cancer survivors. On a different level, a number of survivors are publishing books and articles that define the issues and concerns of survivorship and offer guidance. Some are starting private practices in counseling and related areas to help others living with cancer. A few national organizations, such as Cancer Care and The American Cancer Society, and a number of local health care facilities are further expanding their programs to address issues of survivorship -- and there is even a national news magazine for cancer survivors, COPE, now in its first year of publication.

Throughout the country, more and more organizations are working in the area of survivorship. Most of them are small local units; many are merely neighborhood support groups, which are perhaps the heart of this movement. Others are larger, addressing the needs of specific segments of the cancer populations, such as survivors of breast cancer or persons dealing with childhood cancers. Still others address specific concerns, such as the emotional needs of cancer survivors in treatment, employment rights, or insurance issues.

There is plenty of evidence that the movement has already been very productive. In the area of publishing alone, a number fine newsletters and other small publications have been produced, as well as books, periodical articles, and other educational materials. Each individual, agency, and organization working in survivorship has something valuable to offer; all of them together could be a tremendous resource to each other. But that resource has never been utilized because, in the past, most groups and individuals have worked alone, in separate communities, or with separate segments of the cancer population.

Ironically, the strength of the survivorship movement can be measured, in part, by the fact that these activities have developed independently, without coordination. That, in itself, is a sign that they are in response to real needs and that the needs exist in communities across the country. This is a real grassroots movement.

Now the strength of the movement can be multiplied many times through a national coordinating effort; individuals and organizations, working together, can increase their productivity through the exchange of ideas, information, materials, programs, and personnel. In addition, groups that serve specific segments of the cancer population can be made accessible to members of support groups across the country, while other groups -- those that address specific issues -- can be enabled to tie into a network of thousands of survivor groups.

In spite of the tremendous amount of impressive work already being done, there are large segments of the cancer population not yet being reached. Many communities do not yet have any resources for the survivor population. This is especially true of small and rural areas and inner city neighborhoods where poor and minority groups live. In communities that do have resources, few programs address the needs of long-term survivors; programs are usually designed for survivors in treatment.

The mission, then, of NCCS is to strengthen and broaden an already viable cancer survivorship movement by creating a networking system, opening and maintaining channels of communication, and creating a comprehensive clearinghouse on survivorship. It will build on the already impressive achievements of its members, facilitating the sharing of the existing resources with the potential to multiply their productivity. NCCS will also encourage the movement to reach out to those who are currently underserved, the poor and minority survivors, those in communities with no survivor activities, and the long-term survivors.

Those involved in this movement can be proud of their achievements. Working together through NCCS they now have an opportunity to enhance those achievement and to reach a larger portion of the survivor population. NCCS is an important investment in the future of survivors and in the future of all who are involved in survivorship.

Needed: An Agenda for Survivors

By Fitzhugh Mullan

Reprinted with permission from COPE magazine, November 1986.

Surviving. Nine letters that comprise a short word but a powerful concept.

Surviving is "to remain alive or existent," Webster's tells us, and also "to outlive" — to live beyond, to keep on living, to outlive ourselves, to outlive our diagnoses, to outlive, day by day, what might have been. Surviving is a potent idea, but one that has been paid little heed in the field of cancer treatment.

When I was diagnosed as having a cancer deep in the chest cavity, my mind riveted on two possibilities: cure and death. They seemed to be the options for my future, and I spent much of my waking life ruminating on them. It did not occur to me then, or for some time, that these two notions were insufficient to describe what was happening to me. I was not cured and I was not dead. Rather I was surviving — living on, existing and battling.

Survival was desperate days of nausea and depression and buoyant days of improved strength. It was the anxiety of waiting for my monthly chest X-ray and the joy of eating Chinese food for the first time after struggling with radiation burns of the esophagus.

These reflections and many others are a jumble of memories of a purgatory that was touched by sickness in all its aspects but was neither death nor cure. It was survival — an absolutely predictable but ill-defined condition that all cancer patients engage as they struggle with their illnesses.

There are what I call "seasons of survival" — distinct stages that all cancer patients go through as they cope with their illnesses. The acute stage starts at the moment of diagnosis and continues through the initial rigorous surgical, medical and radiological treatments. This "season," more than the others, is recognized for the support shown the newly diagnosed patient.

The period of extended survival that follows the acute stage is less well recognized. Out from under the initial treatments, the person with cancer now sets about trying to resume some semblance of normal activity. Yet this is a time of diminished physical strength and exercise capacity. Problems such as a lost body part, missing hair and lost weight now have to be dealt with in public and are set against the challenges of the home and the work place. Since this second phase is not predominantly a medical one, doctors and nurses tend to play a much smaller support role. The result often leaves many patients and their families fending awkwardly for themselves in the "healthy" world.

The third phase is not cure but permanent survival, an evolution to a period when the activity of the disease or the likelihood of its return is sufficiently small that the cancer can now be considered permanently arrested. The Humpty Dumpty idea of "as good as new" — a powerfully appealing notion for all cancer patients — simply does not happen. For better and for worse, physically and emotionally, the illness leaves a mark, a permanent and important legacy. Problems with employment and insurance are common; survivors remain at risk for complications from original treatments; and long-term health programs are not well worked out.

There are five million survivors in the United States today. Five million. That is 2 percent of our citizenry; a population larger than that in 39 of our states. Survivors need to recognize their common ground; map it and cultivate it. We need to stimulate the development and use of mutual support groups and communication networks. We need to be able to participate in discussions about national research priorities. We need to be active politically to see that laws are written to assure cancer survivors a full and participatory life.

There is a richness to surviving, a richness of having something that might never have been — whether it is two weeks of life or 50 years. We need to celebrate that richness by proclaiming ourselves survivors and building organizations to reflect our concerns on the local, regional and, ultimately, national level. That is an agenda for the immediate future.

A LETTER FROM THE PRESIDENT OF NCCS

Dear Friends,

I want to welcome you to the National Coalition for Cancer Survivorship — a new organization, a new idea, a new movement.

In October of 1986 twenty-five people met in Albuquerque for an intensive weekend of exchange and debate. The subject was cancer survivorship, the art and science of living after the diagnosis of cancer. All of the participants were involved in the issue as patients, as family, or as health care professionals, and all were concerned about the absence of coordination and collaboration among groups and individuals interested in survivorship. The spirit that brought many of us to Albuquerque is, in fact, captured by the accompanying article "Needed: An Agenda for Survivors" reprinted from COPE magazine.

And, indeed, we left Albuquerque with resolve — the resolve to pool a portion of our energies to build a network, an alliance of people and groups from around the United States who work to improve the quality of life, mutual support and opportunities for cancer survivors. This is the National Coalition for Cancer Survivorship, the NCCS.

The first edition of the NCCS Newsletter is an important step in the development of NCCS activities. In it you will find the NCCS Charter, as well as more information about the plans of the organization and the writing of others concerned with survivorship. Most importantly, it is an invitation for you to join the NCCS. Without your support, both in interest and in finances, the NCCS will not succeed. We are counting on the dues of organizations and individuals to get the NCCS off the ground and on the ideas and activities you share with us to give substance to the network we intend to build.

So do get on the grapevine! We look forward to working with you.

Sincerely,

Fitzhugh Mullan , M.D.
President of the Board of Directors

Fitzhugh Mullan is a pediatrician and a member of the faculty of the Johns Hopkins University School of Public Health. He is the author of the autobiographical book Vital Signs: A Young Doctor's Struggle with Cancer.

NCCS Newsletter
Published by
The National Coalition for Cancer Survivorship
323 Eighth Street SW
Albuquerque, NM 87102
(505) 764-9956

The National Coalition for Cancer Survivorship is a network of independent organizations and individuals working in the area of cancer support and survivorship. The primary goal of NCCS is to generate a nationwide awareness of survivorship, communicating that there can be a vibrant, productive life after the diagnosis of cancer. NCCS facilitates communication between those involved with cancer survivorship, serves as a clearinghouse for information and materials on survivorship, advocates the interests of cancer survivors, and promotes the study of survivorship.

THE BIRTH OF NCCS

The NCCS was founded at a first-of-its-kind national meeting in October, 1986. The three-day meeting held in Albuquerque, New Mexico assembled individuals from across the country who have taken leadership roles in the cancer survivorship movement. Twenty-one participants were chosen from respondents to a national survey taken in the summer of 1986. That survey gathered basic information on organizations and individuals filling two criteria: first, they were addressing the concerns of cancer survivors, and second, they focused on peer support as a fundamental part of addressing those concerns. The survey's respondents expressed a desire to join a national networking organization. To explore the possibility of establishing such an organization, the October national planning meeting was convened.

The survey and the planning meeting were developed by New Mexico cancer survivors working out of the office of Living Through Cancer, Inc., New Mexico's cancer survivor organization. Funding was provided by St. Joseph Cancer Center of Albuquerque and St. Vincent Hospital of Santa Fe.

The October meeting, which has been called the "Constitutional Convention" of the cancer survivor movement, provided an opportunity for leaders from across the country to meet, to look at the growing national movement, and to define its needs and potentials. The focus of attention was the strengthening of the national movement.

The meeting began with a sharing of information and an assessment of the then current state of the movement. That was followed by a lengthy discussion of the needs of individuals and organizations involved with survivorship, and the potential of the survivorship movement. The participants were then ready to formulate a statement of the goals and objectives of the yet unborn organization. The primary goal would be to generate a national awareness of cancer survivorship. Specific objectives would include developing a communication network and a comprehensive clearinghouse for survivorship materials, advocating the rights of survivors, and promoting the study of survivorship.

During the final day of the meeting, a carefully crafted charter was approved (see page 7) and the structure of the infant organization was established. From among the participants, the founding members pictured below, funds were raised to support the organization for its first six months.

The meeting was enormously successful. On October 26, 1986 the new organization was born. NCCS's work had just begun.

Founding members of the National Coalition for Cancer Survivorship take time for a group photo after the October 24-26 meeting in Albuquerque. They are left to right, bottom to top: Michael Lerner, Commonweal, Bolinas, CA; Fitzhugh Mullan, Garrett Park, MD; Neil Fiore, Albany, CA; Harold Benjamin, The Wellness Community, Santa Monica, CA; Pamela La Fayette, Cancer Lifeline, Seattle, WA; Helen Crothers, American Cancer Society, Oakland, CA; Barbara Waligora-Serafin, Harrington Cancer Center, Amarillo, TX; Estelle Weinsburg, Cancer Guidance Institute, Pittsburgh, PA; Alice Hiat, Albuquerque, NM; Shannon McGowan, Cancer Support Community, Point Richmond, CA; Peggie Carey, Life After Cancer, Asheville, NC; Al Hiat, Albuquerque, NM; Julie Becker, Cancer Share, Cincinnati, OH; Yvonne Sophamonian, Candlelighters Childhood Cancer Foundation, Washington, DC; Shirley Miller, Cancer Hot Line, Plantation, FL; Patricia Ganz, UCLA Cancer Rehabilitation Project, Los Angeles, CA; Susan Leigh, University of Arizona Cancer Center, Tuscon, AZ; Catherine Logan, Living Through Cancer, Albuquerque, NM; Barbara Hoffman, Cancer Patients' Employment Rights Project, Philadelphia, PA; Wendy Traber, "Surviving," Stanford, CA; Jan Kinzler, Oncology Nursing Society, Pittsburgh, PA.

SAMPLINGS

A wealth of printed material is currently being produced throughout the country by people who are involved in some way with cancer survivorship. To provide a sampling of that material and to demonstrate the potential of networking, each issue of this newsletter will carry one or more selected items from the publications of our member organizations.

If you have items, long or short, that seem appropriate to share through this feature, please mail them to The National Coalition for Cancer Survivorship, 323 Eighth Street SW, Albuquerque, NM 87102.

From

Survivving!

Survivving is published by a Hodgkin's disease support group in Stanford, California. It is written by survivors and focuses on personal stories. The publication is free to donors of $10 or more. For more information, write: Pat Folbair, Department of Radiation Therapy, Room C056, c/o Stanford University Medical Center, 300 Pasteur Drive, Stanford, CA 94305.

The following is an excerpt from "Shadow Journey," a series of journal entries by Lyn Kahall reflecting her experiences as she lived through cancer treatment. "Shadow Journey" has been published in a series of issues of *Survivving* beginning with the August, 1986, issue. The excerpt is from the most recent issue, (Mhuery/February, 1987.

Coping — The Person Within

I've had a glimpse of what it is like to grow old. Bodies hurt, energy lags, and looks fade. And yet the Spirit can remain untouched by all of those. What a pity happy, vibrant, hopeful, laughing, joking, moving Spirit should be locked into a frail, wrinkled, unmoving prison of a body. The mind is ever active and how often, I've looked in to an old one's face and seen the lively twinkle in the eye even through the hand palsied and body moved only on a wheelchair.

My momentary experience with aging will pass. My energy will return, my skin will become supple again and my hag hair will be glossy, thick and long. I will have metamorphosized after touching age and death. My Spirit will be every joyous but after the years have passed I hope someone will recognize the twinkle in my eye.

At this new beginning I feel better able to face the future and am more open to many choices for what life can be and what I can do. I feel free. I've often had the image of a line in which everyone must stand waiting for something bad to happen when it's your turn to be up front. I don't feel I'm in that line anymore although, I know I'm just as vulnerable as the next person to life's risks. I'm not worried about the line anymore, I don't feel in it. I look forward to the future with all its opportunities for a full life.

It's my anniversary week – a time to remember the most horrible week in my life and be happy. Sometimes it doesn't even seem possible it could have happened and I speak lightly of it now. And then I remember those who can't write their journals any more and know that living can demand too much.

Lyn Kahall

From: *Living Through Cancer*, September/October 1985, Volume III, No. 5

Living Through Cancer, A Journal of Quality Living is published by Living Through Cancer, Inc., a cancer survivor organization based in Albuquerque, New Mexico. The bimonthly journal, usually twelves pages long, is available through an $18 membership or a $12 subscription. Write to LTC, 323 Eighth Street SE, Albuquerque, NM 87102.

LIVING THROUGH... A NEW AWAKENING...

Original Poetry by BRENDA NEAL

Brenda is a 35-year-old cancer survivor. Born in Texas, she has lived the last 29 years in Albuquerque, New Mexico. In May of 1984, she received a diagnosis of non-Hodgkins lymphoma, and was treated with chemotherapy from August 1984 to January 1985.

Since Ms. Neal finished her treatment, she has experienced what she describes as "a whole new awakening." Much of her poetry reflects her own personal growth process, which has been greatly influenced by her cancer experience. Because most of us who have been diagnosed with cancer have also looked within ourselves, in a new way and experienced a great deal of personal change, her poetry speaks to us in a very special way.

BRAND NEW

It's nice to see the world
with new eyes
renewal, rebirth
it's everywhere
– or is it in me?
Second chances can do that.

LIVING THROUGH

This kind of survival
is enough for me now.
Each day of living through
is another day made
another day mine.
I made it.
Come over the finish line
First, second, third
– it doesn't matter –
Just coming across
is winner enough.
Take each as it comes
and savor the victory
of living
and living through.

PERSPECTIVE

In a fragment of eternity
I went from
victim to visionary.
No longer content
to wallow in the past,
I live on the edge of tomorrow
with my feet squarely planted
in the timeless NOW.

PRIORITIES

I'd rather live
with uncertainty
than a deferred pension plan.
I'd rather embrace the unknown,
dancing on the edge
of tomorrow
than worry about a future
that may never come.
I can plan my life away
saving for the proverbial
RAINY DAY,
but what do I do
in the meantime –
when the sun's shining!

SHARING THE JOURNEY

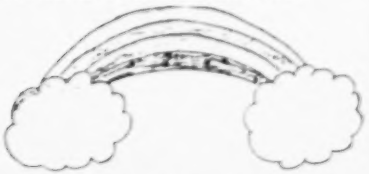
Interdependence
not independence
is the reality of this world.
I have a shared destiny
touching the lives
of countless others
in ripples in a pond
fan out in ever widening circles.
We live in
one another's company
together we can diffuse the pain
and multiply the
joy
of being.

From: *The Candlelighters Childhood Cancer Foundation Youth Newsletter*, Volume VIII, No. 2, reprinted here with permission.

MY BROTHER

by Amy Ferguson

Amy Ferguson of Cincinnati, Ohio, who is eleven years old, wrote and illustrated this story when she was eight as a present for her mother after her sixteen-year-old brother's death.



My brother had Leukemia
It was a little hard to look
at him sometimes because he
lost his hair I love my brother
and my family and everything
And I wish they would take
a little more time on the cure
for Leukemia
The day he died I couldn't
go to sleep and my dad called
my relatives And they all
came over and my dad called my
neighbors and told them too
I miss my brother

The youth newsletter provides information for young cancer patients, their families, and care takers, reports news for young cancer patients and their siblings about how their peers are surviving and coping, and is an outlet for positive expression for young people with cancer.

To receive the free newsletter, you may write to the Candlelighters, 2025 Eye Street NW, Washington, D.C. 20006. Be sure to include the name of the publication in your request.

NOTEWORTHY CALENDAR ITEMS

March 19-21, 1987

ACS Fifth National Conference on Human Values and Cancer. "The Dynamics of Surviving Cancer: Clinical and Research Challenges and Opportunities." To be held in San Francisco, CA. For more information: ACS, 13 Elm Street, Manchester, MA 01944.

March 27-28, 1987

Make Today Count. National Convention in Dayton, Ohio. Featuring Wayne Dyer, author of *Your Erroneous Zones*. For more information: Make Today Count, P.O. Box 222, Osage Beach, MO 65065.

CONFRONTING CANCER THROUGH ART

National Exhibition of Art Work by Cancer Survivors

The first national exhibition featuring art work by individuals with histories of cancer will be held May 9-June 2 at the municipal galleries of the Brand Library in Glendale, California. The show is being sponsored by the Jonsson Comprehensive Cancer Center (JCCC) of the University of California/Los Angeles. Devra Breslow, Director of Special Programs at JCCC, explains, "The exhibition is designed to celebrate the creativity of those who, through art, have found a special avenue for coping with a life-threatening disease." She goes on to say that the art of cancer patients reveals a vast range of emotions including rage, anxiety, grief, and denial, as well as relief, joy, inner harmony, and peace. The show is designed "to celebrate the breadth and depth of the creativity of artists and craftspersons who have confronted the life-threatening condition of cancer."

Expressing emotion through some kind of art form is increasingly used as therapy for persons who are facing serious illness. For genuine artists, this form of expression can be especially powerful. Many artist-survivors feel that their art has played an essential role in coping with cancer; a typical statement made by artists is "If it hadn't been for my art, I would not have survived." Even for those who do not consider themselves artists, such therapy can help in the expression and acceptance of feelings, which is an important part of living through an illness. Art can also inspire imagination, hope, and self-esteem.

The Confronting Cancer exhibition will be a unique opportunity for other cancer survivors to see the work of well-known artist-survivors, work which is a reflection of the artists' lives after a diagnosis of cancer. The exhibition will allow survivors to experience the feelings others have about cancer and to gain insight into those feelings through the artistic medium. This will be an unusual opportunity for networking, a kind of peer support from a different perspective. It will also serve to educate the public at large about the emotional impact of living with cancer. Additionally, the show will reinforce the important message that many individuals live productive, creative lives after the diagnosis of cancer.

For more information contact:

Devra Breslow
Director of Special Programs
Jonsson Comprehensive Cancer Center, UCLA
924 Westwood Blvd., Suite 630
Los Angeles, CA 90024
(213) 825-4066

AN INVITATION FROM RICHARD BLOCH

Last year's Fighting Cancer rally in Kansas City was so successful that a decision has been made to repeat the event this year. The date will be May 31 and the coordinator, Rose Mary Padberg.

Richard Bloch, founder of Kansas City's Cancer Hot Line, is inviting organizations in other communities to plan similar celebrations. It is hoped that, eventually, such events will be held in every major city in the United States. To make that hope a reality, Richard is offering the assistance of volunteers from the Kansas City group to work with groups in other communities. Extensive preparation is required, he says, but the results are well worth the effort. For more information, feel free to call:

The Cancer Hot Line
4410 Main Street (816) 932-8443
Kansas City, MO 64111

PROFILES

Edith Lenneberg — A Proponent of Mutual Aid

In the earliest stages of the development of our thinking about a national coalition, Edith Lenneberg was the one to point out that the very foundation of the survivorship movement in which we were involved is mutual aid. Edith is a person who abounds with wisdom and insight, gained through years of leadership and organizational work in the mutual aid movement.

Edith has been involved in mutual aid since it first became a part of health care. In 1952, following her own surgery for ulcerative colitis, she founded the Ostomy Association in Boston. At that time Alcoholics Anonymous was the only mutual aid organization that had received public recognition. Ostomy associations throughout the country were being formed by ostomates themselves — a grass roots movement in direct response to unmet needs. When the national organization was founded in 1962, the Boston group's publication, which Edith had initiated, became the national newsletter.

Edith went on to take an active role in the development of the Enterostomal Therapy profession, another development in direct response to unmet needs. It was the ostomates who understood the need for the development of this kind of expertise, and in the early years of the profession, most of the Enterostomal Therapists (E.T.'s) had ostomies or were relatives of ostomates. Edith was one of the first E.T.'s in the country. She believes that this kind of grass roots response to unmet needs can readily pave the way to appropriate response by professionals.

Edith also believes that the development of different levels of expertise to meet different kinds of needs is of prime importance. Today's ostomates in the acute stage are served by a highly skilled team — doctor, nurse, and enterostomal therapist — in a hospital setting. Registered nurses on the team must have special training to work in this field. Ambulatory patients are served by enterostomal clinics on an outpatient basis. And for the ostomate living in the community, the Ostomy Association functions as a support system. Of all of her achievements, Edith finds the most satisfaction in having been active in the development of this full continuum of services.

From 1967 to 1977, Edith worked at the New England Deaconess Hospital, where she developed a multidisciplinary clinic for ostomates that was years ahead of its time. With an emphasis on living with an ostomy, the clinic helped individuals make their way back into normal, everyday activities. This was one of the first programs to deal with the broad ramifications of recovery in relationship to patient and family life. In 1975 the clinic was used as a model for the development of a comprehensive life support clinic for cancer patients who were receiving treatment on an outpatient basis at Deaconess Hospital.

Edith brings all of this experience with her as she continues her work in the cancer survivorship movement. Her particular interest in the NCCS is, in part, a result of her own history of cancer. She underwent surgery for ovarian cancer in 1965 and again in 1975. In 1977 she had both chemotherapy and radiation therapy as further treatment for the cancer.

It is this personal experience with cancer, along with her extensive work in the mutual aid movement, that makes Edith such a valuable asset to the survivorship movement. She was a participant in the very first discussions about the development of a coalition for cancer survivorship, and in February of 1987 she joined the NCCS Board of Directors.

CANCER GUIDANCE INSTITUTE

...Pittsburgh, Pennsylvania

"A positive attitude is crucial. Think of cancer as a chronic, rather than a fatal, disease. In spite of the problems it causes, in many cases it can be controlled, allowing for years of productive and satisfying life."

In 1981 Lynn Gray, a cancer survivor, founded the Cancer Guidance Institute for the following purposes:

— To enable patients, families and medical/helping professionals to understand the vital role the patient plays in health recovery and health maintenance.

— To expand patient education materials.

— To facilitate effective communication between the medical/helping professions, the patient and the family."

The Institute's mission is "to promote a positive and realistic attitude to cancer patients, their relatives and friends through providing support from a person who has had a similar experience."

The Institute provides information on all types of cancer, on currently available methods of treatment, and resource materials. It also offers emotional support and guidance for immediate problems, from diagnosis through the course of the illness, as well as referral to other community resources.

In 1983 the Institute established a Cancer Hotline. The Hotline is a twenty-four hour telephone service matching callers with trained volunteers who, themselves, have experienced cancer. The Hotline, which already has serviced over eighteen hundred calls, not only gives callers emotional support, but also gives volunteers a sense of fulfillment. Callers are urged to maintain open communication with family, friends, and care givers while learning about cancer, its prevention, and treatment, using all available resources — professional persons and health care agencies, printed material, and sources of emotional support.

To promote insight into the special needs of cancer patients, the Institute also sponsors workshops and conferences for the public and for health care professionals.

The Cancer Guidance Institute has several noteworthy publications. *The Cancer Challenge* is a quarterly newsletter containing current information on cancer topics. It is free to members; membership fees start at $15. *Living with Cancer*, a booklet by Lynn Gray, and *Mind Over Cancer*, a cassette by Lynn Gray, are also available from the Institute.

For more information contact:

Estelle Weinsburg, Executive Director
Cancer Guidance Institute
5608 Stillway Street
Pittsburgh, PA 15217

National Coalition for Cancer Survivorship
CHARTER

Preamble

Cancer is an unwelcome intruder in life. Yet cancer is also an inescapable part of many lives. From the time of its discovery and for the balance of life, an individual's diagnosed with cancer as a survivor. Surviving is an enormously important, often difficult, always challenging human enterprise that involves the individual, the family, and the givers of care.

Mission Statement

The mission of the National Coalition for Cancer Survivorship (NCCS) is to communicate that there can be vibrant, productive life following the diagnosis of cancer, that millions of cancer survivors share a common, transforming experience that has imparted their lives with new challenges and enhanced potentials, and that these survivors, their families and supporters represent a burgeoning constituency and a powerful, positive force in society.

Objectives

The objectives of NCCS are:

1. To serve as a clearinghouse for information, publications, and programs for the many organizations working on the issues of survivorship.

2. To provide a voice for the many common and recurring issues of these organizations reflecting the spirit, skills, and needs of the survivorship community.

3. To advocate the interests of cancer survivors to secure their rights and combat prejudice.

4. To promote the study of the problems and potentials of survivorship.

DID YOU KNOW?

The Wellness Community in Santa Monica, California has over 2800 cancer patients involved in its programs each week and more than 3,500 since the organization was founded in 1982.

Life After Cancer Pathways, in Asheville, North Carolina, has over thirty volunteers helping patients participate more fully in their treatment.

Commonweal, in Bolinas, California, offers seven, week-long retreats each year for exceptional cancer patients and family members interested in an intensive experience of stress reduction and group support, as well as in surveying the possible choices in established and complimentary cancer therapies.

Plantation, Florida, along with a number of other communities, has an active cancer hot line with trained cancer survivor/volunteers helping others who have questions or are in need of support.

The Cancer Counseling Institute in Bethesda, Maryland, was founded by cancer survivor Caroline Sperling.

NCCS has invited a number of prominent individuals to serve on the advisory board. The following have already accepted the invitation:

Rose Kushner, Author, President of The Breast Cancer Advisory Center, Kensington, MD.

Patricia Ganz, M.D., oncologist, Sepulveda, CA.

Michael Lerner, Ph.D., President of Commonweal, MacArthur Prize Fellow, Bolinas, CA.

John Durant, Director, Fox Chase Cancer Center, Philadelphia, PA.

NCCS would like to thank Margaret Kutcher for her help on this newsletter.

NCCS needs your support

Membership Information

NCCS membership is available to organizations and individuals. Membership fees will be used to develop a national network of cancer support and survivorship organizations and will enable members to receive this newsletter, as well as future publications, and to participate in NCCS networking activities.

Membership fees are critical to launching NCCS, for it starts with no endowment and no assets other than the enthusiasm of its members and potential members.

☐ **Charter Membership** — NCCS is inviting individuals and organizations to become Charter Members by making an initial contribution of $50 or more. Charter Members will be recognized as such in NCCS literature in the future.

☐ **Organizational Membership** — 1 percent of the member organization's budget is suggested, or a minimum of $25 (annual).

☐ **Individual Membership** — $10 (annual).

Donations

☐ $500 ☐ $250 ☐ $100 ☐ $50 ☐ Other _____

Name _____ Phone ( )

Address _____ City _____ State _____ Zip _____

Make checks payable to the National Coalition for Cancer Survivorship, a project of LTC. (Until NCCS incorporation is completed, it is operating as a project of Living Through Cancer, Inc., a New Mexico 501(c)3 corporation.) Mail to:

The National Coalition for Cancer Survivorship 323 Eighth Street, SW Albuquerque, NM 87102

EMPLOYMENT DISCRIMINATION AGAINST CANCER SURVIVORS:

The Current State of the Law

by Barbara Hoffman

Barbara Hoffman is a practicing civil rights attorney in Philadelphia who specializes in the rights of individuals with disabilities. She also serves as the Director of the Cancer Patients Employment Rights Project of the Foundation for Dignity, providing counseling to individuals and agencies, public and professional education, and consultations to federal and state legislators regarding pending legislation concerning the rights of individuals with a cancer history. Ms. Hoffman is a founding member of NCCS and Secretary of the Board of Directors.

* * * * *

Current studies estimate that more than one million of the five million cancer survivors in the United States experience some form of employment discrimination solely because of their cancer history. Types of discrimination include denial of a new job, demotions, undesirable transfers, loss of benefits, and outright dismissal. In many instances, cancer survivors are able to perform a job, yet are denied the opportunity to do so because employers and fellow workers erroneously believe that cancer is always fatal, is contagious, or renders the survivor disabled.

What are the legal rights of cancer survivors who are qualified to perform the job they seek or hold, yet are discriminated against solely because of their cancer history? Although the scope of anti-discrimination laws frequently changes, cancer survivors have some legal remedies in current federal and state laws.

Federal Laws:

1. The Rehabilitation Act of 1973 prohibits discrimination based on handicap in programs receiving federal financial assistance. Because federal courts have not reached the issue of whether the Act applies to cancer-based discrimination, its impact on cancer survivors is unclear. Some cancer survivors may fit under the Act's definition of handicap. Additionally, because the Act prohibits discrimination against an individual who is "perceived" to be handicapped, regardless of whether he or she is actually handicapped, the Act may apply to cancer survivors who face job problems because their employer erroneously "perceives" them to be impaired. The Act provides remedies such as back pay and reinstatement.

2. The Employee Retirement and Income Security Act (ERISA) prohibits discrimination against an employee when the purpose is to keep that employee from collecting benefits under a benefit plan. ERISA may provide a remedy to an employee who has been denied full participation in an employee benefit plan. ERISA may also be implicated if an employer encourages an employee with a cancer history to retire as "disabled" when, in fact, the employee is able to continue working.

State Laws:

Most states have laws which prohibit discrimination based on handicap. Only Arizona, Delaware, North Dakota, South Dakota, and Wyoming do not prohibit employment discrimination based on real or perceived disabilities. Many state laws borrow language from the federal Rehabilitation Act. Some expressly prohibit cancer-based discrimination, while others provide protection only to individuals with real, as opposed to "perceived," disabilities.

Because few cancer survivors have brought lawsuits to enforce their rights to equal job opportunities, the handicap laws in many states remain untested as to cancer survivors. In a few states the law is clear.

In California, Vermont, and Illinois, state law expressly prohits employment discrimination against a cancer survivor who is able to perform the job. In New York and Wisconsin, state courts have held that cancer survivors are covered under the state's handicap law.

What should you do if you are considering a legal remedy because you have been treated unfairly in the workplace because of your cancer history? You should not assume that you are included or excluded by any specific law. Employment discrimination laws undergo frequent modification, and groups such as the National Coalition for Cancer Survivorship are currently working with federal and state legislators to introduce new laws designed to address the specific needs of cancer survivors. If you are unable to work out a satisfactory agreement with your employer, you should contact a local attorney to determine how your specific case fits under current federal laws and the laws in your state.

Publication of this newsletter is made possible by a generous gift from Patricia MacManus of New York.

The NCCS Newsletter wants your participation. NCCS invites letters, poetry, comments, photos, and unsolicited articles on cancer survivorship. Articles should be written in nontechnical language and range in length from 350 words to 1000 words. Unused items will not be returned unless a stamped, self-addressed envelope is provided for that purpose.

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Mr. MARTINEZ. Thank you, Ms. Hoffman. Your testimony was exactly 5 minutes. The Chair neglected to announce that the prepared statements, would be entered in their entirety into the record, and if the rest of our witnesses today could likewise try to limit their testimony to a maximum of 5 minutes, it would be appreciated. And in order to be certain that everyone has an opportunity to ask questions of the members of the panel, we will invoke the 5-minute rule for questions as well.

With that, we go to Ms. Monaco.

STATEMENT OF GRACE POWERS MONACO, ESQ., WHITE, FINE & VERVILLE

Ms. MONACO. Thank you, Mr. Chairman, members of the committee, and our valued warrior in this endeavor, the Honorable Mario Biaggi from New York.

I am wearing several hats today. I am a partner in a law firm here in town in which I serve as a consumer ombudsman, but the primary hat I am wearing is as chairman of the board of The Candlelighters Childhood Cancer Foundation and the representative of its registered lobbying arm, the Metropolitan Washington Area Candlelighters. Candlelighters, which has been in existence for 17 years, represents over 200 parent support groups in the United States that are for families, the professionals, and that are fighting the battles to make our children full, card-carrying, competent adults, able to make their way in the world.

The disabilities that we are talking about today are not the disabilities of our children, who have fought the battle of cancer and are out there trying to make a living for themselves, trying to find a place for themselves in the world. The disability and the handicap is in the ears of those that, through ignorance or malice or misinformation or a lack of humanity, are keeping our children from their education and employment and insurance opportunities. We go a long way towards remedying those problems with the bills that were introduced today and that are the subject of this hearing, predominantly the one that was introduced by the Honorable Mario Biaggi.

In testimony that I previously put into the record at the hearings last year, we demonstrated the real discrimination against our children in employment; the fact that our children are coming onto the job market new, naked. They don't have peer groups to support them. They don't have work histories to support them. They don't have labor unions to support them. All they have is the law and the good will of the people who care about them and who are advocating for them, be it their parents, their educators, their legislators in this case. They need that good will and they need the legislation that is being introduced today.

Were we right in saying there was a problem? Were we right in saying that something needed to be done about it? Well, the armed services believe we were right. Subsequent to our testimony at the last hearing, that was entered into the record, the Department of Defense has changed its regulations and, as to childhood cancer survivors, a history of cancer is no longer a bar to admission to the service academies or to the armed services.

We now need to bring that hard-fought and won, enlightened approach by our Defense Department, which does not wish to lose all these great, strapping marvels that we are turning out after childhood cancer treatment, and enlighten the private sector as to what our children can and must be permitted to do. Sixty-five percent of our children are being cured of cancer. Now if those children are fully employed, we will be adding, over the lifetime of each group of survivors who are entered into the rolls each year, a potential of over $1 billion in gross annual income that will go to the bottom line in this country. I don't think we can afford, in the interests of what we want to achieve in this country, to have our children unemployed or underemployed.

One concern that has been raised by people who say, "Why do we need this bill? Why do we need this act?" is, "Well, gosh, fellows, we have those statutes out there that deal with human rights. We have those statutes out there that deal with helping people that are handicapped. Why can't the cancer patients just kind of latch onto those and get what we need? Do we really have to add the words "cancer" or "a history of cancer" to this kind of a statute?

The answer to that is, "Absolutely yes." One proof of this is Timmy Calonita, who will be testifying later. Bob Norton, who is the president of the Long Island Candlelighters, has been pushing the legislation on the State level, the Biaggi bill on the State level. He has gotten it through the State Legislature, almost completely, but there is word out that the Governor is going to veto the bill. Why is the Governor going to veto the bill? Because his Civil Rights Commission is saying that it is unnecessary, because persons with a cancer history now come within the protection of the disability discrimination provision of the human rights law. Balderdash! Take it to court and see if it works.

Let me give you an example right here in D.C. that will tell you that it doesn't work and why this legislation is necessary. The result I am talking about was reached by a District Court judge here in the District of Columbia, and it is a good example of why special legislation is needed to protect cancer patients.

In that case, a man with colon cancer was effectively fired from his job even though he was fully capable of working. When he sued under the District of Columbia Human Rights Act which protects handicapped workers, he discovered that he was not protected by the act. The act defined "physical handicap" as "a bodily or mental disablement." The judge in that decision reasoned that because he was not actually physically disabled at the time that the discrimination acts took place, he was not therefore handicapped and did not fall within the act's protection. The court stated that in order for him to be protected by the Human Rights Act, he would have to demonstrate that his cancer substantially limited his ability to perform major life activities. Ironically, it was not until he would have been too sick with his disease to work that he would have been protected by the act.

I think that tells you something about the lack of common sense in the way the State laws that do not include cancer as a handicap are employed, and why we need Congressman Biaggi's legislation.

There have been similarly absurd results reached in many other States, some of which I refer to in my testimony.

I want to thank the committee very much for taking up the banner—and the cudgel, because we will need a bit of that, too—to get this legislation through. It is kind of what we would say, as a lawyer, should be "black letter law." It should be the kind of thing that rings a bell in everybody's heart and mind, so that you know it is wrong to do these things, but there are a lot of very selfish people out there, a lot of very scared people who don't want to change things and who don't want to reach out beyond themselves to utilize this wonderful resource.

I thank you for letting me come here to testify, and I thank you for opening up additional opportunities so that our children who have won the battle against cancer, who are magnificent individuals with many talents to give and grow and share, will be able to have the opportunity to be fully employed for your benefit and mine.

Thank you.

[The prepared statement of Grace Powers Monaco follows:]

PREPARED STATEMENT OF GRACE POWERS MONACO, J.D., ON BEHALF OF METROPOLITAN WASHINGTON AREA CANDLELIGHTERS

To the Honorable Matthew G. Martinez and Committee Members

Thank you for the opportunity to bring to your attention the pressing need for H.R. 1546 introduced by Representative Biaggi.

I represent the Metropolitan Washington Area Candlelighters which is the registered lobbying group speaking to public issues concerns of the over 200 parent peer support groups and professionals groups contained in the educational, informational, sharing network of the Candlelighters Childhood Cancer Foundation.

In the testimony previously presented in the hearings on this bill, I articulated the history of discrimination against childhood cancer survivors as reflected in the peer reviews, medical literature and in the correspondence archives of parent support groups (1,2,3,4). I will not belabor that point further. The substantive rightness of this bill is reflected in the fact that since my last testimony the Department of Defense has changed its rules relating to admission of our childhood cancer survivors into the service academies and the armed services. No longer is a history of cancer an exclusion. Rather, on a case by case basis, those survivors of childhood cancers who generally are five years beyond treatment will be considered for admission;

> "Individuals who have a history of childhood cancer and who have not received any surgical or medical cancer therapy for five years and are free of cancer will be considered, on a case by case basis, fit for acceptance into the Armed Forces. Applicants must provide information about the history and present status of their cancer." Department of Denfense Directive March 31, 1986,# 6130.3.

The federal government, the armed forces are realizing that the able bodied person with cancer in his past can be a valuable employee. It is time to educate the rank and file employer to this same humane and productive

positon.

Now that 65% of our children are cured of cancer, last year the potential lifetime earnings of those children diagnosed each year who will be cured adds an additional one billion dollars to the gross national product if they are employed to their full potential. There are obstacles to that potential additon to to the gross national product.

Our New York Candlelighters from Islip, New York under the guidance and passion of Bob Norton have encounted this obstacle in the pursuit of a H.R. 1546 on the state level. Mr. Norton's efforts and those of Timmy Calomita, who is here today, have been faced with the claim by state agencies that there is no reason to add cancer specifically, the state's human rights act will accommodate and protect them against discrimination - NOT SO!

Let me give you an example right here in D.C. which should bring home to you the need for a cancer specific act dealing with discrimination against the person who has or had cancer.

> The result reached by a District Court Judge here in the District of Columbia is a good example of why special legislation is needed to protect cancer patients. In that case, a man with colon cancer was effectively fired from his job even though he was fully capable of working. When he sued under the District of Columbia Human Rights Act which protects handicapped workers he discovered that he was not protected by the Act. The Act defined physical handicap as a "bodily or mental disablement." The Judge in that decision reasoned that because he was not actually physically disabled at the time that the discrimination acts took place, he was not therefore handicapped and did not fall within the Act's protection. The Court stated that in order for him to be protected

by the Human Rights Act he would have to demonstrate that his cancer "substantially limited his ability to perform major life activities..."

Ironically when it was not until he would have been too sick with his disease to work that he would be protected by the Act. This result really means no protection. In the case of this individual, he had about nine months of reasonably good health during which he could have continued to work. He was deprived of this right because he was not sick enough.

A similarly absurd result has been reached in other cases. A court in Illinois in 1982 found that cancer was not a disability within the meaning the Illinois Human Rights Act because the patient was not able to demonstrate that her illness limited her "life activities". Lyons v. Heritage House, 432 N.E. 2d 270 (Ill. 1982).

Though we would like to believe that good will and good intentions will accommodate our cancer survivors under the various state human rights laws-obviously this is not the case.

We need this law for our children's future and for our country's prosperity.

Thank you for permitting us to appear before you.

1. American Cancer Society. Cancer: your job, insurance and the law. New York: American Cancer Society; 1984.

2. Holmes, Grace E; Baker, Ariel; etc. The availability of insurance to long- term survivors of childhood cancer. Cancer; January 1, 1986; 57:1, 190-193.

3. Monaco, Grace Powers. Is the benefit package fair to the cancer patient. Presented at the American Cancer Society Workshop on Employment, Insurance and the Cancer Patient, New Orleans; December 15-17, 1986.

4. Monaco, Grace Powers. No cured kids need apply. Pediatric Grand Rounds Memorial Sloan Kettering Cancer Center, September 13, 1984.

5. Monaco, Grace Powers. Socioeconomic considerations in childhood cancer survival; society's obligations. The University of Texas M.D. Anderson Hospital and Tumor Institute Tenth Annual Mental Health Conference, Childhood Cancer Survivors: Living beyond cure, April 11-12, 1985.

6. Wasserman, A.; Wilimas J.; etc. Psychosocial late effects of long-term survivors of childhood adolescent Hodgkin's disease. (HD) Proceedings of American Society Clinical Oncology; 1986; 5: 241.

Mr. MARTINEZ. Thank you, Ms. Monaco.
With that, we turn to Mr. Calonita.

STATEMENT OF TIMOTHY CALONITA, MINEOLA, NY

Mr. CALONITA. Mr. Chairman, members of the committee, I would like to thank you for inviting me here today.

In September of 1972 at Winthrop University Hospital in New York, a malignant tumor under my right arm was removed. I was diagnosed as having Hodgkin's disease, a cancer of the lymphatic system. At age 11, I was given 6 months to live. In October of 1972 I was relocated to Memorial Sloan Kettering Cancer Center in Manhattan. Barely 3 weeks after my initial surgery, an exploratory operation was performed upon my abdomen. From October to November I was given a total of 4,000 rads of radiation treatments.

My disease entered into a state of remission until September of 1973. The malignancy had reappeared in my right lower chest. Another operation was performed and once more I was given 4,000 rads of radiation treatments. For the second time the cancer entered into remission.

It wasn't until May of 1976 that the cancer recurred. Since my body had been exposed to the maximum amount of radiation permissible, the only alternative was to resort to chemotherapy treatments. Chemotherapy is considered a much more thorough treatment than radiation because it goes throughout the whole body, as opposed to radiation treatments which are directed at specific points in the body. From June of 1976 to July of 1977, I was given two 6-month cycles of chemotherapy. Since then I have not had a cancer cell in my body and am considered disease-free.

Almost 10 years have passed and my scars have healed. As with most bad experiences, I dealt with, learned from it, and put it in my past. During those 10 years, I graduated from high school, entered college and graduated with a 4-year Bachelor's Degree in government and politics. It wasn't until I had completed my first year of law school that cancer would again play a significant role in my life.

In the summer of 1985 I was notified by the Civil Service Commission to report for a medical examination for police officer. At the examination, I successfully completed all the medical test but, upon submitting my medical history sheet, I was marked "conditional" due to the Civil Service Commission's medical requirement that automatically disqualifies anyone with a presence or history of a malignant tumor.

The doctor present at the testing sought to disqualify me. He stated that I had no chance of being placed on a list of eligible candidates. Because doctors have been mistaken regarding my chances in the past, I chose to contest the matter. The doctor conceded, and I was allowed to take the physical and psychological exams. After passing the physical and psychological tests, I was asked to submit a letter from my doctors concerning my cancer history. Memorial Sloan Kettering submitted a 1-page medical history confirming that I was in perfect health and that any further information would be furnished upon request.

The commission's reply was a notice of termination from the list of eligible candidates. Their decision on my medical fitness was based upon a 1-page letter. One must question the competency of this decision. How could a proper determination my medical fitness be based upon a 1-page synopsis of 6 years worth of medical records?

When I contacted the Civil Service Commission, one of the officials stated, "It's the word, it's cancer," that caused my termination. Here I was, a candidate who successfully completed all the required testing, yet was being told due to a past medical problem that by all medical standards exists only in memory, I was not worthy of being placed on the list of eligible candidates. Two further appeals were denied, and my final termination letter concluded with the statement, "We can be of no further assistance to you."

At that point the Civil Liberties Union threatened court action on my behalf. Only after threat of lawsuit did I suddenly receive notice from the Civil Service Commission stating that I had been reappointed to the list of eligible candidates. This had the effect of rendering my cause of action moot, thus enabling the commission to continue enforcing a blatant practice of discrimination against persons with a cancer history.

What is being asked today is not a demand that persons with a cancer history be given automatic employment. All that is being asked is to give these people the same chance as anyone else. After the pain and suffering that most cancer victims experience on the road to recovery, the least they deserve is to be given that chance. I am in no way stating that if a person does not measure up to the medical, physical and mental requirements, that he or she be given employment.

I do believe that persons with a cancer history must be specifically addressed in the law, since they are unique in a number of ways. The number of people who contract cancer are by far greater than any other disease. Cancer, like many other diseases, is not inherently a disabling disease. True, it can in some cases result in a disability such as having a limb removed, but a fever has been known to cause complications leading to deafness, blindness, or even death, yet we do not consider a fever as a disabling disease.

In instances were a person is rendered disabled, no matter what the cause is, he or she would come under protection of the applicable disabilities laws now in effect, but most cancer patients cannot be classified as disabled. Once rid of the disease, there are no special diets to be followed or shots or medicines to be administered. All that remains with the former cancer patient are memories.

As far as queries to the possibility of a recurrence, I, for example, have not had a cancer cell in my body for almost 10 years. There is no medical evidence to show a person this many years disease-free has any greater risk of recontracting the disease faster than anyone else contracting it for the first time.

One's outlook plays a critical role in the recovery process. Imagine how much hope is extinguished from former cancer patients when knowing after being cured they will have lost basic human rights and will be stigmatized for life. The legislation which we talk about today will not only affect those cured, but will also breathe life into the hopes of many who are currently undergoing

treatment. It is a message that there is hope and that society expects these people to move on within their lives.

On behalf of myself, the cancer groups who have been supportive in my efforts, and the millions of Americans who have had or will contract the disease, I ask that you support this proposed legislation. Cancer attaches itself to men, women and children of all races and does not discriminate in its choosing. Cancer discrimination, like cancer, if left untreated will only grow and spread and eventually destroy the lives of those it touches.

Thank you.

[The prepared statement of Timothy Calonita follows:]

Prepared Statement of Timothy Calonita, Former Cancer Patient, Mineola, NY

In September of 1972 at Winthrop-University Hospital in New York a malignant tumor under my right arm was removed. I was diagnosed as having Hodgkin's disease--a cancer of the lymphatic system. At the age of eleven, I was given six months to live. In October of 1972 I was relocated to Memorial Sloan Kettering Cancer Center in Manhattan. Barely three weeks after my initial surgery, an exploratory operation was performed upon my abdomen. From October to November, I was given a total of 4,000 rads of radiation treatments. My disease entered into a state of remission until September of 1973. The malignancy had reappeared in my right lower chest. Another operation was performed and once more I was given 4,000 rads of radiation treatments. For the second time, the cancer entered into remission. It wasn't until May of 1976 that the cancer recurred. A small malignancy was removed from the left side of my neck. Since my body had been exposed to the maximum amount of radiation permissible, the only alternative was to resort to chemotherapy treatments. Chemotherapy is considered a more thorough treatment than radiation because it goes throughout the whole body as opposed to the radiation treatments which are directed at specific points in the body. From June of 1976 to July of 1977, I was given six-two month cycles of chemotherapy. Since then, I have not had a cancer cell in my body and am considered disease-free.

Almost ten years have passed and my scars have healed. As with most bad experiences, I dealt with it, learned from it, and put it in my past. During those ten years, I graduated from high school, entered college and graduated with a four-year bachelor's degree in government and politics. It wasn't until I had completed my first year of law school that cancer would again play a significant role in my life.

In the summer of 1981, I was notified by the Nassau County Civil Service Commission to report for a medical examination for a position as a police officer. At the examination, I successfully completed all the medical tests but upon submitting my medical history sheet, I was passed conditional due to the Civil Service Commission's medical requirement that automatically disqualifies anyone with a presence or history of a malignant tumor. The doctor present at the testing sought to disqualify me. He stated that I had no chance of being placed on the list of eligible candidates. Because doctors have been mistaken regarding my chances in the past, I chose to contest the matter. The doctor conceded and I was allowed to take the physical and psychological exams the following week. After passing the physical and psychological exams, I was asked to submit a letter from my doctors concerning my cancer history. Memorial Sloan Kettering submitted a one page medical history confirming that I was in perfect health and that an further information would be furnished upon request. The Commission's reply was a notice of termination from the list of eligible candidates. Their decision on my medical fitness was based on a one page letter. One must question the

the competency of this decision. How could a proper determination of my medical fitness be based on a one page synopsis of six years of medical records?

When I contacted the Civil Service Commission, one of the officials stated that "it's the word, it's cancer," that caused my termination. Here I was a candidate who successfully completed all the required testing, yet I was being told that due to a past medical problem, that by all medical standards exists only in memory, I was not worthy of being placed on the list of eligible candidates.

I was informed by the Commission's officials that I was entitled to two further appeals. In regard to both appeals, Memorial Sloan Kettering expressed in writing that there was no justification medically that I should be excluded from anything I wish to do in my career. Both my appeals were denied and my final termination letter concluded with the statement, "We can be of no further assistance to you."

At that point, the Nassau County Civil Liberties Union threatened court action on my behalf. Only after threat of lawsuit did I suddenly receive notice from the Civil Service Commission stating that I had been reappointed to the list of eligible candidates. This had the effect of rendering my cause of action moot, thus enabling the Commission to continue enforcing a blatant practice of discrimination against persons with a cancer history. I wish to note that it is not only I who views the Commission's practic as a blatant form of cancer discrimination, but the views of 4,650 people who have signed a petition calling for the abolishment of the Commission's medical standard. Although the majority of signatures come from New York, there are hundreds of supporters from over twenty states as far south as Texas and as far west as Washington showing its great importance not only to the State of New York but to the nation.

My battle with cancer discrimination has been won, but the war goes on for many others. Estimates show that over one million people are suffering from some type of cancer discrimination. Statistics also show that one in every four persons will contract some form of cancer during their lifetime. This, coupled with the rising cure rates, will escalate the problem of cancer discrimination.

What is being asked today is not a demand that persons with a cancer history be given automatic employment. All that is being asked is to give these people the same chance as anyone else. After the pain and suffering that most cancer victims experience on the road to recovery, the least they deserve is to be given that chance. I am in no way stating that if a person does not measure up to the medical, physical, and mental requirements that he or she be given employment, especially positions with the police and fire department. I have nothing but the greatest admiration for these groups who do so much for society

and are often given so little in return.

I do believe persons with a cancer history must be specifically addressed in the law since they are unique in a number of ways. First, the number of people who contract cancer are by far greater than any other disease. Cancer, unlike many of the other major diseases, is not inherently a disabling disease. True, it can, in some cases, result in a disability, as in a limb being removed. But in comparison, a high fever has been known to cause complications leading to deafness, blindness, or even death, yet we do not consider a fever as a disabling disease. In instances where a person is rendered disabled, no matter what the cause is, he or she would come under the protection of applicable disabilities laws now in effect. But most cancer patients cannot be classified as disabled. Once rid of the disease, there are no special diets to be followed or shots or medicines to be administered. All that remains with the former cancer patient are memories.

I am told that many persons who do in fact suffer from a disability hate to be classified as handicapped. Imagine how a person must feel who is in no way, shape, or form disabled, yet labeled as such. If there are persons who wish to argue that cancer is a disability, I would appreciate an explanation on how I myself am disabled.

As far as querries to the possibility of a recurrence, I, for example, have not had a cancer cell in my body for almost ten years. There is no medical evidence to show that a person this many years disease-free has any greater risk of recontracting the disease faster than anyone else contracting it for the first time. In fact, if one wished to look at the law of averages, I most likely hold the edge since I had my turn. The problem is that for many persons their turn has yet to come.

While deliberating this legislation, one must keep in mind the people it represents. Unlike many other interest groups, there are no little yellow signs to affix on their vehicles that read, "I'm Proud to be Cancer-Free," or "Cancer Power." Cancer patients, both former and present, often feel that after fighting a long, hard battle to sustain life only to have to face another--that of employment discrimination, is not worth the endeavor. Another train of thought is to try to bury the disease in memory as one may do with a past criminal record. Often cancer victims will not be hopeful because they fear to be publically labeled as having cancer. The end result is that there is a special interest group of millions of Americans, who due to outdated fears and misconceptions on their part and society, are silently being robbed of a chance to lead normal productive lives. The question must be answered: What can be cured medically, when is he or she cured legally?

One's outlook plays a critical role in the recovery process. Imagine how much hope is extinguished from cancer patients when knowing after being cured they will have lost basic human rights and will be stigmatized for life. The legislation which we talk about today will not only affect those cured but will breathe life into the hopes of many who are currently undergoing treatment. It is a message that there is hope and that society expects these people to move onward in their lives. Please keep in mind that this legislation, unlike laws on other types of discrimination, could be of benefit to each and everyone of us in the future.

On behalf of myself, the cancer groups who have been supportive in my efforts, and the millions of Americans who have, had, or will contract the disease, I ask that you support this proposed legislation. Cancer attaches itself to men, women, and children of all races and does not discriminate in its choosing. Cancer discrimination, like cancer, if left untreated will only grow and spread, and eventually destroy the lives of those it touches.

MEDICAL REQUIREMENTS

THE PRESENCE OF OR HISTORY OF ANY OF THE FOLLOWING CONDITIONS ELIMINATES OR REJECTS UNTIL CURED (AS INDICATED IN APPROPRIATE COLUMN)

	PRESENCE OF	HISTORY OF	REJECTED UNTIL CURED
[illegible]		X	X
[illegible] ALLERGIC CONDITIONS chronic and [illegible]		X	X
[illegible] chronic allergic skin diseases gastrointestinal allergic etc.			
II – BLOOD CONDITIONS			
3 ANEMIA – Or any other chronic blood condition		X	
4 SPLEEN – Any enlargement of		X	X
III – CARDIOVASCULAR			
5 BLOOD PRESSURE – Systolic reading higher than 160 – Diastolic reading higher than 90		X	X
6 EDEMA		X	
7 HEART – Significant abnormality in rate rhythm or force. Enlargement or significant murmur. Tachycardia (a rate of over 100 after a period of rest)		X	X
8 VARICOSE VEINS, if marked			X
IV – EAR CONDITIONS			
9 HEARING – Loss of		X	X
10 INFECTION – Chronic perforation of the ear drum – chronic infection or discharge or otitis externa		X	
11 Infection of middle ear or mastoiditis			X
V – ENDOCRINE GLANDS DISORDERS			
12 ENDOCRINE GLANDS DISEASE (e.g. pituitary, adrenal, gonads, etc.)		X	X
13 GOITRE		X	
14 HYPERTHYROIDISM – HYPOTHYROIDISM		X	X
15 ACUTE ADRENITIS			X
VI – EYE CONDITIONS			
16 CHRONIC EYE CONDITIONS (e.g. glaucoma, [illegible]		X	X
17 [illegible]		X	X
18 EXOPHTHALMOS		X	
19 HOMONYMOUS OR BILATERAL HEMIANOPIA		X	X
20 STRABISMUS – If it causes facial disfigurement		X	
21 [illegible]			X
VII – GASTRO-INTESTINAL CONDITIONS			
22 [illegible] GALL BLADDER or Biliary Tract Disease		X	X
23 GASTRO-INTESTINAL TRACT – any chronic abnormality (e.g. non-functional colon, etc.)		X	X
24 HEMATEMESIS or MELENA		X	X
25 [illegible]		X	X
26 [illegible]			
27 SEPTIC SORES		X	X
28 HEPATITIS –		X	X
29 [illegible]			X
VIII – CEREBRAL CONDITIONS			
30 [illegible]		X	X
31 At Time of Classification or Military Service Duty – change in basic trait or mental condition [illegible]			X
32 PROSTATITIS – Recent effects or history of [illegible]			X
IX – GENITO-URINARY CONDITIONS			
A. UROLOGIC			
33 CONGENITAL ABNORMALITY – significant		X	X
34 [illegible]			
35 DISEASE OF THE URINARY TRACT – (e.g. [illegible]		X	X
36 [illegible] ALBUMINURIA or GLYCOSURIA [illegible]			X
37 [illegible]		X	X
38 [illegible]			
39 [illegible]		X	X
40 [illegible]		X	X
X – GLANDS			
41 ANY CHRONIC or GENERALIZED GLANDULAR ENLARGEMENT as revealed by palpation or X-ray		X	X
42 ACUTE ADENITIS			X
XI – HERNIA			

	PRESENCE OF	HISTORY OF	REJECTED UNTIL CURED
XIV – MUSCULO-SKELETAL SYSTEM			
A. BACKS AND JOINTS			
47 APPLIANCES to bones or joints (e.g. bone grafts, metal plates, screws or pins, etc.)	X		
48 CONGENITAL MALFORMATION – of back, if any phase of condition is unsatisfactory to Medical Examiner (e.g. sacralization of lumbar vertebrae, spondylolisthesis, etc.)	X	X	
49 DISEASE or INJURY of back, joints or muscles as revealed by examination or X-ray	X	X	
50 LIMITATION of motion or function, weakness or lameness of back or joint, paralysis	X	X	
51 OPERATION on bone, joint or spine, or if any phase of this condition is unsatisfactory to Medical Examiner		X	
52 SPINAL CURVATURE – unless mild and functional	X	X	
53 PILONIDAL CYST or SINUS			X
B. UPPER EXTREMITIES			
54 IMPAIRED GRIP or function of hand	X		
55 IMPAIRED or missing phalanx of thumb or index finger	X		
56 IMPAIRMENT or amputation of more than 3 phalanges of the 10 on the other 8 fingers	X		
57 MARKED INEQUALITY of arms in length or width	X		
58 LIMITATION of motion or function of shoulder, elbow or wrist	X		
C. LOWER EXTREMITIES			
59 ABSENCE or impairment of large, second or third toe	X		
60 DEFORMITY or OTHER CONDITION which may impair function of foot (e.g. Hallux valgus, hammer toe if disabling, third degree pes planus, etc.)	X	X	
61 MARKED INEQUALITY in length or width of legs or defective gait	X		
62 LACK OF FULL FUNCTION of hip, knee ankle or foot	X	X	
62A MENISCECTOMY	X	X	
63 MUSCULAR ATROPHY	X	X	
D. SKULL			
64 DEFECT or presence of artificial plate	X	X	
XV – NERVOUS SYSTEM			
65 ALCOHOLISM, drug addiction, epilepsy, seizures, mental hospital confinement, psychoses, psychopathic personality or other marked personality disorder	X	X	
66 REPEATED HEADACHES – dizziness or nervous attacks of any kind	X		
67 CHARACTER NEUROSIS – if so severe that it interferes with satisfactory social adjustment	X	X	
68 NEUROLOGICAL CONDITION	X		
69 PSYCHONEUROSIS or nervousness	X		X
70 RESIDUAL EFFECTS of head injury	X		
71 TICS or TREMORS, which are frequent and obvious	X		
XVI – NOSE			
72 SINUSITIS – chronic	X	X	
73 EPISTAXIS – History of repeated attacks			X
74 NASAL OBSTRUCTION – if marked			X
XVII – RESPIRATORY SYSTEM			
75 PLEURAL EFFUSION or spontaneous pneumothorax	X	X	
76 RESPIRATORY CONDITION – chronic (e.g. bronchitis, bronchiectasis, emphysema, fibrosis, enlarged hilar glands as determined by examination or X-ray). Chest deformities	X	X	
77 HOARSENESS – chronic			X
78 RESPIRATORY infection – acute			X
79 TUBERCULOSIS	X	X	
XVIII – SKIN			
80 BALDNESS (alopecia totalis)	X		
81 BIRTHMARK (nevus) may eliminate	X		
82 CHRONIC CONDITION – causing facial disfigurement (e.g. acne, scar, burns, etc.)	X		
83 ACUTE CONDITION of skin			X
[illegible]			

CALDWITH, TIMOTHY
781

NASSAU COUNTY CIVIL SERVICE COMMISSION
NOTICE OF MEDICAL EXAMINATION RESULTS

EXAM NO. 7047 POLICE OFFICER JUN 26, 1985

CANDIDATE:

A. [X] YOU HAVE PASSED THIS STAGE OF THE MEDICAL FOR THE ABOVE EXAMINATION SUBJECT TO CONDITIONS INDICATED BELOW

B. [ ] [ ] AT [ ] IF MISSING BOTH OF CANINE, A DENTIST MUST REPAIR OR PROSTHESIS AS REQUIRED AND HE MUST CERTIFY TO THE CIVIL SERVICE COMMISSION THAT YOUR MOUTH IS HEALTHY AND THAT ALL MISSING TEETH HAVE BEEN REPLACED INSOFAR AS IS PRACTICABLE.

C. [ ] [ ] IF YOU HAVE A HISTORY OF ASTHMA, YOU MUST HAVE A PHYSICIAN FAMILIAR WITH YOUR MEDICAL HISTORY CERTIFY TO US THAT YOU ARE NOW SUBJECT TO ASTHMA AND HE MUST FURTHER INDICATE THE DATE YOU HAVE LAST SUFFERED FROM ASTHMA

D. [ ] [ ] ARRANGE FOR YOUR WEIGHT _____. YOU MUST REDUCE TO _____ LBS. _____ DATE TO _____ LBS. _____

E. [ ] [ ] [ ] [ ] YOU MUST BE EXAMINED BY AN EAR, NOSE & THROAT SPECIALIST.

F. [ ] [ ] [ ] [ ]

July 15, 1985

Medical Department
Nassau County Civil Service Commission
147 Old Country
Mineola, NY 11501

Re: CALOVITA, Timothy
MH #28-37-54

To whom it may concern:

Timothy was first seen at Memorial Hospital in October 1972 because of a right axillary node. The biopsy showed Hodgkin's disease, nodular sclerosing type. He had no symptoms and there was no evidence of disease elsewhere in his body; therefore he was a stage IA. From 10/30/72 to 11/27/72 he was given irradiation, a total of 4,000 rads to the right axillary and right supraclavicular region. In 9/73 a routine chest X-ray showed a right hilar node. This was biopsied and showed recurrent Hodgkin's disease. From 9/24/73 to 10/29/73 he was given irradiation to the mediastinum down to L_2 region, a total of 4,000 rads. In 5/76 he had a recurrent node in the left supraclavicular and left lower neck area which was biopsied, again showing Hodgkin's disease. From 6/28/76 to 7/28/77 he received multiple drug chemotherapy which consisted of Adriamycin, Prednisone, Procarbazine, Vincristine and Cytoxan. His last dose of chemotherapy was in 7/77 and he has remained disease-free since. He has had regular check-ups at Memorial Hospital and all his physical examinations and the laboratory data have been normal.

If there is any other information you need, please do not hesitate to contact me.

Sincerely yours,

Charlotte Tan, M.D.
Department of Pediatrics

CT/rm

[illegible]

NASSAU COUNTY
CIVIL SERVICE COMMISSION
140 OLD COUNTRY ROAD
MINEOLA, N.Y. 11501
516 535-2511

EXECUTIVE DIRECTOR
ADELE LEONARD

DEPUTY EXECUTIVE DIRECTOR
RONALD G. LEVINSON

July 30, 1985

Mr. Timothy Calonita
114 Mullington Place
Mineola, New York 11501

Dear Mr. Calonita:

This is in reference to your physician's letter dated July 11, 1985 Charlotte Tan, M.D., Memorial Sloan-Kettering Cancer Center.

In reviewing this letter your physician indicated a history of [illegible] with recurrent metastatic nodal spread, which is a medical disqualification for Police Officer, Examination No. 4475.

Therefore, we regret that the processing of your application for Police Officer has been discontinued.

Very truly yours,

Adele Leonard
Executive Director

By: Frank Monteleone
Frank Monteleone
Recruitment Division

AL:FM:jp

A <
5 3 5-710
Rehabilitation - K
1-175
H12 5-94

August 14, 1985

Re: CALONITA, Timothy
SS# 428-37-04

Dear Sir:

Timothy had a complete physical examination, including laboratory evaluation, in the Outpatient Department on August 6, 1985 and he is in excellent health. Timothy has had adequate treatment in the past and, in my 33 years of experience in working with childhood Hodgkin's disease, Timothy stands an excellent chance of remaining free from disease and there is no justification medically that he should be precluded from anything that he wishes to do in his career.

I will be happy to answer any questions regarding his past medical history.

Sincerely yours,

Charlotte Tan

Charlotte Tan, M.D.
Professor,
Cornell University Medical College
Associate Chairman,
Developmental Therapeutics
Memorial Hospital

NASSAU COUNTY
CIVIL SERVICE COMMISSION
140 OLD COUNTRY ROAD
MINEOLA, N.Y. 11501
516 535-2511

September 12, 1985

Dear Mr. [redacted]:

We regret to inform you that at its meeting on September [redacted] the Commission disqualified you from Police Officer, [redacted] "104" for failure to meet the medical requirements.

[redacted] based upon your medical history of having [redacted] which is a medical disqualification under [redacted] Standard 29 of the Medical Requirements for [redacted].

[redacted] affords you an opportunity to submit facts, within ten days, in opposition to your disqualification. If you choose to be represented by an attorney, the explanation [redacted] of facts may be filed by your attorney. However, [redacted] apply that any statutory period of limitation is hereby waived.

Very truly yours,

Adele Leonard
Executive Director

By: Frank Montcleone
Frank Montcleone
Recruitment Division

[redacted]

September 17, 1985

[illegible]
[illegible] County Civil Service Commission
[illegible] Old Country
Mineola, NY 11501

Re: CALONITA, Timothy
MH #28-37-54

Dear Mr. Mentaleone:

On August 6, 1985 Timothy Calonita had a complete physical examination [illegible] in our Outpatient Department and he was found to be in excellent health. He has had adequate treatment in the past for Hodgkin's disease and has remained disease-free since his last chemotherapy in July 77. My opinion, based on 33 years of experience in working with childhood Hodgkin's disease, is that Timothy has an excellent chance of remaining free from disease and there is no justification medically that he should be excluded from anything that he wishes to do in his career.

Sincerely,

Charlotte Tan, M.D.
Professor,
Cornell University Medical College
Associate Chairman,
Developmental Chemotherapy
Memorial Hospital

[illegible]:
[illegible] Calonita

NASSAU COUNTY
CIVIL SERVICE COMMISSION
140 OLD COUNTRY ROAD
MINEOLA, N.Y. 11501
516 535 2511

October 3, 1985

Mr. Timothy Silvestro
[illegible] Ellington Place
Mineola, New York 11501

Dear Mr. Silvestro:

This is to inform you that at its meeting on October 1, 1985 the Commission adhered to its original decision to disqualify you from Police Officer, Examination No. 7247 for failure to meet the medical requirements as per our [illegible] letter dated September 12, 1985.

We regret that we can be of no further assistance to you in this matter.

Very truly yours,

Adele Leonard
Executive Director

By Frank Montelleone
Frank Montelleone
Recruitment Division

[illegible]

NYCLU

New York Civil Liberties Union, Nassau County Chapter 210 Old Country Road, Mineola, N.Y. 11501 (516) 741-8520

November 7, 1985

Adele Leonard, Executive Director
Nassau County Civil Service Commission
140 Old Country Road
Mineola, New York 11501

Dear Ms. Leonard:

We are writing on behalf of Timothy Calonita who, as you know, has been finally denied an appeal of his rejection as a candidate for Nassau County police officer.

According to your letters of September 12 and October 3, 1985, Mr. Calonita has been rejected under Sec. VIII, Standard 29 of the Medical Requirements for Police Officers, which states that anyone with a history of malignant tumor is by definition disqualified.

In our view, that standard and its application to Mr. Calonita violate Sec. 296 of the State Human Rights Law, Sec. 504 of the Federal Rehabilitation Act of 1973, as well as the New York State and U.S. Constitutions, all of which prohibit discrimination against anyone on the basis of a disability or a perceived disability that does not prevent him from performing the job in question in a reasonable manner.

We are writing to request that you reconsider your rejection of Mr. Calonita and that you rescind your guideline, Sec. VIII, Standard 29, that automatically disqualifies a candidate because of a history of malignant tumor.

We would like to hear from you by Monday, November 18, 1985. If we do not hear from you favorably by that date, we intend to promptly initiate legal proceedings.

Very truly yours,

Barbara Bernstein
Executive Director

Alan J. Reiss
Legal Director

National Headquarters: ACLU, 132 W. 43rd Street, N.Y. 10036 Tel. (212) 382-0557 Norman Siegel, Executive Director

NASSAU COUNTY
CIVIL SERVICE COMMISSION
[illegible] OLD COUNTRY ROAD
MINEOLA, N.Y. [illegible]
[illegible]

January 15, 1986

Mr. Timothy Calomiris
[illegible] Williamson Place
[illegible], New York 11501

Dear Mr. Calomiris:

Enclosed herewith please find a copy of Resolution No. [illegible], adopted by the Nassau County Civil Service Commission on January 7, 1986 regarding your appeal for your disqualification from examination No. 5847 Police Officer.

Very truly yours,

Adele Leonard
Executive Director

e-016/1564--A Motion was made by Commissioner Gerko, seconded by Commissioner Koch and unanimously carried adopting the following resolution:

WHEREAS at its meeting of September 5, 1985 the Commission disqualified Dimmie Osborne, Candidate for examination No. 7247 Police Officer, for failure to meet the medical requirements for the position, and

WHEREAS, at the suggestion of the County Attorney, a third medical opinion was sought, and

WHEREAS the Commission reviewed a letter dated December 16, 1985 from James P. C. Rhee, M.D.,

Resolved, That based on the opinion expressed by Dr. Rhee in the aforesaid letter the processing of the application of Dimmie Osborne, candidate for examination No. 7247 Police Officer, be continued.

Mr. MARTINEZ. Thank you, Mr. Calonita.

Let me ask you, what basis did they use to establish a policy of hiring no one with a cancer history?

Mr. CALONITA. I have submitted in my written statement a copy of the civil service medical requirements that state in black and white "a history or presence of a malignant tumor" automatically disqualifies someone.

Mr. MARTINEZ. But did they establish a policy with any reasoning behind it, or did they just automatically say, "Well, this is a high risk group and we don't want to accept the responsibility of health costs afterwards"?

Mr. CALONITA. Well, that was one of the interesting aspects. After the problem first appeared in the papers, the head of the Civil Service Commission commented that I could have any one of any other 1,900 civil service jobs, just not the police department, so that I do assume that I could be insured under any other job, but yet they were denying me the police department.

Mr. MARTINEZ. But they did not give you or give anyone the basis for that policy for the police department?

Mr. CALONITA. They would speak to no one.

Mr. MARTINEZ. Ms. Monaco?

Ms. MONACO. I anticipate the basis that the police were using there is the same type basis that was used by the Department of Defense. Their rules were established over 30 years ago, initially, excluding cancer patients. At that point in time, cancer was not the kind of disease that you could expect a good result from. We didn't know enough about recurrences. There were too many ambiguities and uncertainties in whether a cancer patient was going to be able to get out there and be fully employed. The decision to exclude and the history for the decision to exclude just has not kept up with the evolution of medical possibilities for cancer patients.

Mr. MARTINEZ. Thank you.

In the case that you cited, did the courts readily recognize that there was discrimination, but that that individual didn't qualify because he didn't come under the classification of "disabled"?

Ms. MONACO. It is a rather complicated decision, but as to the part I have dealt with, yes, that is exactly the case. The law did not specifically specify that cancer was a disabling condition. He was not physically disabled when he was fired. He was fired, constructively fired really, by being demoted after he came back from his cancer treatment into a job he was not qualified for and was not educationally prepared for, with the idea of pushing him out of the job, which did occur. The point was that until he had a physical disability that was demonstrated, the law would not apply to him, exactly as I have stated in the testimony.

Mr. MARTINEZ. But it sounds as if they did recognize that there was discrimination.

Ms. MONACO. Oh, yes. They did recognize, but they didn't feel that the law empowered them to do anything about it because he did not come within the letter of that law.

Mr. MARTINEZ. I see. Very strange.

The 1 million that you referred to, Ms. Hoffman, who established that 1 million people are being discriminated against?

Ms. HOFFMAN. I think the 1 million is a very conservative effort. That is a figure that I have used and that some other people in this field have used. There have been studies through the last 30 years on this issue, and the more prominent ones show anywhere from 25 to 84 percent of all cancer survivors in certain situations encounter some form of discrimination in the workplace. The number problem comes in where you define what is discrimination. Some studies define it only as being fired or being denied a job opportunity. Others encompass other forms of discrimination on the job, such as losing insurance or being isolated in the workplace physically, so the 1 million is really only 20 percent of the 5 million cancer survivors. That is a very conservative estimate. In reality it is probably a much higher number.

Mr. MARTINEZ. That leads me to my last question. You know, many times discrimination is very subtle and it is not easy to detect. In the case of a cancer patient, is it easy to define, recognize and establish in a particular instance that there was discrimination, or is this one of those things that once we establish the law, it is still going to be another difficult thing to prove it in instances and get it resolved? I would like each of you to respond to that, starting with Ms. Hoffman.

Ms. HOFFMAN. Just like in all forms of employment discrimination, in many cases the sophisticated employer is not going to vocalize exactly why he is discriminating against, so in many cases of cancer-based discrimination it will not be that clear and you will need to bring out the facts on both sides to determine the real reasons for discrimination. But in some cases, such as in New York with the civil service regulations, the discrimination is written into civil service rules.

In New York, just to clarify the bill that is pending in New York right now, initially Senator Dean Skelos had introduced a bill which would prohibit employment discrimination against cancer survivors in all phases of employment in New York. The bill that is currently pending is a scaled-down version which only applies to the civil service regulations, and the reason he did that is because the civil service regulations themselves single out cancer survivors. They don't single out people with other ailments. They single out cancer survivors, which is why we need specific legislation such as the Skelos bill, and especially such as Congressman Biaggi's bill, that deals with cancer survivors specifically.

Mr. MARTINEZ. Ms. Monaco?

Ms. MONACO. There are two parts to my answer to this question, one of which is yes, because the employers certainly are not going to tell people usually that they are firing them or not hiring them because they have a history of cancer. It is sometimes difficult.

The point is that when we have the teeth of legislation such as has been introduced today, employers are going to be aware of that fact. They are going to know they have to be more careful, and we can then go out and say, "There is a tool here. There is this act." We can, through the National Coalition for Survivorship, which Barbara is representing, through the Candlelighters Childhood Cancer Foundation, the American Cancer Society, et cetera, we can tell people, "You have certain rights that are extra rights. This is the way you conduct a job interview. This is the way you make a

record for yourself." We can empower and train the youngsters and the young adults who are coming up, on making a record, on getting the answers to the questions that will permit us to show on a record, in a court proceeding or in an arbitration or in an administrative proceeding, depending upon what happens, that indeed when you put all these circumstances together it comes up discrimination.

Mr. MARTINEZ. Thank you.

Go ahead, Mr. Calonita.

Mr. CALONITA. Mr. Chairman, I would also like to comment on the numbers being discriminated against. Part of the problem, such as with the civil service requirements, the requirements are sent out with the application to take the police exam. Quite often many former cancer patients will see the automatic termination and decide not even to follow up, so there are many people suffering from cancer discrimination who are not even voiceful.

I can testify that I know one young man who is only 19, who never thought that he had a chance at becoming a police officer. Now, through the various articles that have appeared on my case, he intends to go out and try this now. You have to keep in mind the people you are dealing with here. They are a very silent majority, and unfortunately they hide it away, as one might do with a past criminal record. They are not as voiceful as many other groups.

Mr. MARTINEZ. Thank you, Mr. Calonita.

Mr. Gunderson?

Mr. GUNDERSON. Thank you, Mr. Chairman, and thank all of you for your testimony. In all due respect to the two representatives here, there is nothing better than personal testimony, and I am sure you agree.

Tim, your testimony I think was most moving. Can you enlighten us? You say you are back on the list of the civil service applicants.

Mr. CALONITA. Well, at the time when I had applied to take the police officer exam, I was also applying for law school. I had heard from law school first, so I went in and completed a year. After one year I wasn't sure how much I wanted to go back, and that's when I followed up with the police department. When the matter was finally resolved, which took almost over a year, I came so close to graduating at this point—and which I now have done—that the recruitment officers said I would be more of an asset to the force if I waited on the top of the list. I have now been given to the police department, and the next available class they have, they will call me.

I would also like to note that the police department that this whole thing came up in issue about is supportive of Senator Skelos' legislation on the State level, and here we have a department who the civil service is saying I can't join, saying they wish to have me as soon as I can come to them.

Mr. GUNDERSON. So you think that you can join at this point in time, now, as a result of——

Mr. CALONITA. At this point I have been handed over from the civil service. I have been put on a list of eligible candidates and the police department can take me into the academy as soon as I tell them I'm ready.

Mr. GUNDERSON. Do you believe that the basis for discrimination within the private sector is one which most likely is focused on health insurance costs, or what do you think is the actual basis for that discrimination?

Mr. CALONITA. I feel, as Ms. Hoffman has testified to, there are many misconceptions about the cure rates of cancer. It is much more successful than it was, say 10 years ago when I first contracted the disease. I do know that health insurance is probably the biggest fear of former cancer patients and the parents of children who have cancer. I myself am fully covered under Blue Cross and Blue Shield. I am one of the lucky ones, but I do know that the Life Insurance Council of New York, for instance, came out in opposition against Senator Skelos' bill on the State level.

Mr. GUNDERSON. You know, a case of such blatant discrimination as apparently the civil service regs is fairly easy to deal with. You can just require that that be deleted. As I think Ms. Hoffman indicated, it is far more difficult and I think one of the things we in Congress must struggle with is the question of, "Was this actually the basis for the nonhiring as opposed to some other reason?" How do we deal with that from a legal perspective to protect against discrimination but at the same time not weight preference to a cancer victim versus someone else, all things being equal? That is kind of a challenge, legally and statutorily, to develop. I don't know if any of you have any comments on that.

Ms. HOFFMAN. I have a comment. Congressman Biaggi's bill strikes the perfect balance to resolve the situation you are talking about. The bill prohibits discrimination against qualified cancer survivors. It does not require employers to hire someone who is not qualified for the position, and it provides a mechanism through the EEOC to have a check and balance, to determine whether or not it is unlawful discrimination or justified discrimination in any particular case, so it provides a case-by-case study in the EEOC, which is exactly the same procedure we have been using for the past 20 years in other employment discrimination laws.

Mr. GUNDERSON. Do you believe that cancer victims would be covered if the Title 7 statutes were amended to prohibit discrimination based on handicap or disability as provided under Representative Moakley's bill?

Ms. HOFFMAN. I think you would encounter the same problem we have with, "Are cancer survivors covered under current State statutes which prohibit handicap discrimination?" The two problems there are, first, it is not clear whether a cancer survivor is handicapped. In many cases, as Tim Calonita has pointed out, cancer is not a handicap at all.

Secondly, requiring cancer survivors to bring legal actions under the term of handicap merely perpetuates the mythology. The word "handicap" is simply inappropriate for this situation. There needs to be specific terminology to correlate with medical fact.

Mr. GUNDERSON. There are some civil rights groups that appear to indicate, if not directly, indirectly, that they simply don't want Title VII opened up because they are scared of what the final outcome might be on the floor of the House or the Senate. Do any of you have any comments in response to that kind of an attitude

which apparently exists within some elements of the civil rights community?

Ms. HOFFMAN. Congressman Biaggi's bill is not an amendment to Title VII. It is a freestanding act. Congressman Moakley's bill, which is an amendment to Title VII, has been needed for 25 years. If there is a situation out there for which there is no sufficient legal remedy, then the whole purpose of having civil rights acts which provide a balanced form of resolving a situation should be amended to meet that need.

Mr. GUNDERSON. My only final comment is that, Tim, in all due respect to the two ladies sitting next to you, I sure hope you become a policeman rather than a practicing lawyer. [Laughter.]

I yield back the balance of my time.

Mr. MARTINEZ. Thank you, Mr. Gunderson.

With respect and meaning nothing derogatory, it has always been unfathomable to me how you can arrive at a position that so many of our very intelligent friends on the other side of the aisle do arrive at, that when you don't allow discrimination, you somehow create preference. I mean, Steve, you are going to have to sit down and explain to me how that happens.

Mr. GUNDERSON. I think you should let the plaintiff attorneys in those cases explain how it happens. [Laughter.]

Mr. MARTINEZ. At any rate, Mr. Owens?

Mr. OWENS. I have no questions.

Mr. MARTINEZ. Mr. Biaggi?

Mr. BIAGGI. Thank you.

With relation to your desire for Mr. Calonita to be a policeman over being an attorney, I assure you that you will probably make more money in the police department, at least in the early years, because Nassau County police are the highest paid in the country. I want to congratulate you on your persistence.

Mr. CALONITA. Thank you very much, sir.

Mr. BIAGGI. I want to wish you well on the bar. I hope you are only required to take it once.

Mr. CALONITA. Thank you very much, Congressman. [Laughter.]

Mr. BIAGGI. It's a clear manifestation of man's inhumanity to man. It's a terrible process.

I am pleased that the police department has agreed to accept you, but the question I pose is, do the applications still contain references to cancer? Not simply for Mr. Calonita, but I mean for all aspirants, as a matter of policy has it changed? Singling you out, I mean, we are pleased for you but it doesn't address the fundamental question. Are you aware of whether there has been a change in either of those areas?

Mr. CALONITA. Yes, I am, Congressman. I just received a list of the new drafted guidelines of the civil service, since they do have another police test coming up, hopefully before the end of the year. They do seem to say now a presence or history of a malignant tumor, because of all the problems that have occurred in Nassau County with myself, they have added the word "may" disqualify, and they underlined the word "may." Based on their past practices and their reluctance to even discuss their medical standards or how they arrive at them, I and also the Human Rights Division find this an inadequate solution.

Mr. BIAGGI. Yes, I think that's substantial progress.

I had a number of questions. You made reference to the medical insurance and you say you have it. Under your name?

Mr. CALONITA. No, I don't. I am employed under a family business and I am insured under the family plan.

Mr. BIAGGI. Have you ever tried to get it under your name?

Mr. CALONITA. No, I haven't, but that will be coming up very shortly. The other day I did call for automobile insurance, and at the end of the conversation the insurance man said, "By the way, do you smoke?" I said no, and he said, "Well, when you come down, boy, do I have a good policy for you." I am looking forward to see what happens.

Mr. BIAGGI. Have you got a surprise for him!

Mr. CALONITA. Yes. [Laughter.]

Mr. BIAGGI. Tell him you have already been there.

You made reference to this, but I would like to elaborate on it, really stress it. It has been my experience that in the light of discrimination, people who are employed are reluctant to reveal, one, that they are undergoing treatments, or that they in fact have had cancer. Have you found that to be a common occurrence? In other words, they secrete this knowledge.

Mr. CALONITA. Yes, I do, Congressman. One of the most asked questions to myself when I speak at various cancer groups, often it is the parents who say, "Should I admit that my child has cancer? Should my child admit it?" Often, being 19 or 20, should they admit it when they are even applying to colleges. That is also a very big worry, believe it or not, on many parents, whether the child will be denied application to college because——

Mr. BIAGGI. You mean colleges have that question in their applications?

Mr. CALONITA. If I am not mistaken, one of the leading cases in New York on this area was where a young woman was denied admittance to a psychoanalytic college based on the fact that they felt she wouldn't be able to fulfill the requirements of the degree. I do believe she had fought that and she eventually won the case. I think that was back in the early seventies.

Mr. BIAGGI. Ms. Monaco, the Department of Defense has changed its regulations and you have made reference to it. Can you explain the old policy to us and what has happened since 1986?

Ms. MONACO. Let me just relate to the childhood cancer issue right now because the adult one is a little bit more complicated, but I will send some information over to your office on the entire one.

What has happened is that prior to the change, if you had a history of cancer you were automatically not able to be in the armed services, to be in one of the service academies, to be in one of the ROTC programs, to be in the Reserves or the National Guard. We were having more and more children who were cured of cancer, some of whom were great big strapping Marine types that could probably bench-press three people with one arm at one time, and they were going down to their recruiters who were crying because they wanted this hunk in the Marines and the Marines wouldn't take him. The Marines did not want a few good men if they had cancer histories, and these were some children that had been diag-

nosed with cancer at age 3 to 5 and were now 19 to 24 and were absolutely purebred cured. You could go to book on the fact that they were cured.

Mostly because of the pressure of recruiters who were a little bit distressed, the pressure of some magnificent Air Force doctors stationed at Wilford Hall in Texas who were doing physicals on some of our kids who wanted to get in, who were saying, "This is a bummer, and we are missing a lot of good candidates for the academies and for the Air Force," fortunately, one of our gentlemen who had a good feeling about childhood cancer survivors wrote the report that went upstairs to the Surgeon General and company, that was eventually adopted by the Department of Defense, in which they said, "Hey, if you are a survivor of childhood cancer, we are going to take a look at you on a case-by-case basis and let you in."

I am happy to say that one of the first people that got in is one of my foster sons. Since I lost my only daughter to cancer, I pick up other people wherever I can find them, and T.J. McCue from Philadelphia was one of the first that was admitted on this waiver policy. He is now in the Air Force. He is in Guam. He writes to a lot of other childhood cancer survivors who say, "Hey, if you could do it, I can do it." He doesn't like the climate but so far he is surviving under the Air Force.

So yes, with childhood cancer I think we've got a good shot and we've got a lot of friends out there to help us.

Mr. BIAGGI. What about the schools?

Ms. MONACO. The schools, again it is a question of where you are and who is listening to you. We do have discrimination in some of the professional schools against our children, because they are saying, "Well, we are not convinced that it is worth giving you a slot in a class in which there are a lot of people competing, regardless of the fact that you are smart and wonderful and good, because maybe you will die and we will lose the benefit of the training we are giving you." The times that it has been raised, it has been fought and it has been won, but again it is a question of, should we force these children, whose doctors are convinced they are cured of cancer and who are cured of cancer and who are cured of cancer in their own minds, should we force them to have to go to court or to arbitration every time they want to win a point in life? We shouldn't.

Mr. BIAGGI. Are you satisfied that this legislation will ameliorate that situation?

Ms. MONACO. I am satisfied that this legislation will point the way, and if there are other problems that we have, we will be able to take care of them ourselves.

Mr. BIAGGI. Ms. Hoffman—last question, Mr. Chairman—while we are working to pass H.R. 1546, it may take some time, as you know, and then we may be fortunate and get it through in a hurry. Should we also undertake a parallel effort at the State level?

To illustrate, I introduced a grandparents' visitation rights bill, and it was a new issue but it was a very emotional and passionate situation. At the time I think there were 14 States that had some legislation on the books. Because of the interest that we created here in Washington, that took on a national perspective through

the media, every State in the Union has some legislation. Assuming that we may be confronted with similar delays in our legislative process, what would be your assessment of embarking on a State-by-State undertaking?

Ms. HOFFMAN. I think we have to continue a State-by-State undertaking, which we are doing now. That is not the best answer. The best answer is passing your bill because it would provide uniform coverage around the United States, but if we don't have that immediately, then at least getting some better coverage in some States is certainly a way to benefit individuals in those States.

California right now has the model legislation on this issue, and other States are beginning to pick that up in introducing amendments to their own civil rights laws. All but one State I believe now, at the most recent count, has some kind of disability rights protection, but because most of these laws do not clearly protect cancer survivors, especially those who are not considered disabled under the statute, then we have to work to try to clarify the law.

Just to keep bringing up New York, since we have a representative from New York on the panel, one of the problems is, even when you have a law which the State Human Rights Commission in New York says prohibits cancer-based discrimination, and there has been an adjudicated case on the books where a cancer survivor won her case under that act, the State agency which enforces that law still will not strike down the civil service regulations which blatantly are violative of that act. Another advantage of your bill is that it would invalidate any civil service regulations around the United States and other State rules that are blatantly discriminatory.

Mr. BIAGGI. Will you give me the case involved that you just referred to in New York, and the agency involved?

Ms. HOFFMAN. Yes. It is called Goldsmith v. New York Psychoanalytic Institute, and I can provide your office with that cite.

Mr. BIAGGI. I appreciate that. I want to thank each of you for your presence and your contribution.

Thank you, Mr. Chairman.

Mr. MARTINEZ. Thank you, Mr. Biaggi, and thank the three of you for appearing before us.

Oh, Mr. Owens, I'm sorry.

Mr. OWENS. I have no questions.

Mr. MARTINEZ. Thank you very much for appearing before us today.

With that, we will call our second panel. The second panel consists of Alex Rodriguez, commissioner, Massachusetts Commission Against Discrimination; Dr. William Kiernan, director of rehabilitation, Developmental Evaluation Clinic of the Children's Hospital; and Dr. Robert Davila, vice president, pre-college, Gallaudet University. We will begin the testimony with Alex Rodriguez.

STATEMENT OF ALEX RODRIGUEZ, COMMISSIONER, MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Mr. RODRIGUEZ. Good morning. My name is Alex Rodriguez and I am the chairman of the Massachusetts Commission Against Discrimination, which is the agency responsible for enforcing Massa-

chusetts' civil rights law. I have a prepared statement which I will give to the panel. It will be more than 5 minutes so I am not going to read that. I will just take 5 minutes to try to paraphrase what I believe are the most relevant issues concerning H.R. 192.

Before I begin, let me just tell you something about my family's background to show that there are some personal concerns about this legislation as well as my official concern. I lost a brother to cancer 2 years ago who was a Korean vet, and I do know the serious difficulties that one encounters with cancer. I have a brother living with me now who moved in from California last year because he lost a lung to cancer this year, and is now getting ready to go back in about 2 weeks. He did have radiation therapy and did very well. I have two other brothers—one is a vet of the Second World War and one of Korea—who are both in wheelchairs and have been in wheelchairs. One is paralyzed from the waist down; the other has multiple sclerosis and a developmental disability from the Second World War which was service-related. I just want you to know this as I move forward.

The major points in my testimony, I talk in support of H.R. 192 but I also want you to know I strongly support H.R. 1546, and I don't see any conflict here. One leaves a resolution to the problem to Title VII and EEOC, which we need very badly, in H.R. 192. The other, Mr. Biaggi, you allow people to go straight to the civil courts.

I think both are imperfect, and I would hope through my testimony that you put your heads together and attempt to perfect what you are attempting to do here. Those who have testified earlier on the cancer bill, yes, cancer-related treatment in the place of employment might need a separate place, as Mr. Biaggi has indicated in his legislation. I don't think there is any conflict by having that separate place.

I think the imperfection is that you ask people to go to thousands of different courts throughout the country, and the legislation or the intent of your legislation will then be interpreted by thousands of different judges in thousands of different ways, and that is slow evolution. We'll get there eventually, but I have seen legislation to protect people evolve that way and I don't consider that the best method of doing it.

The imperfection cited in legislation that would cover handicapped people, as our legislation does in Massachusetts, evolves in the same manner. I think it evolves quicker because you have given the responsibility to a panel, and you would be in EEOC, that by repetitious history would get us there quicker in terms of defining exactly what the coverage that was expected by your legislation should be, and I can give you many examples.

Let me tell you what has happened in Massachusetts in terms of our legislation, as we started on March 7, 1984. We have gone from zero percent of the case load, obviously, on March 7, 1984 to 20 percent of our employment cases today. Twenty percent of our employment cases are now handicap cases, before the commission, and the two major problems that we have had to deal with are the issues of reasonable accommodation—what are we expecting the employer to do here?—and the issue of the pre-employment questioning of one's particular handicap.

In our legislation we demand that there be reasonable accommodation, and we are quiet in Mr. Moakley's Title VII amendment about this point, and we also forbid and deem it illegal to make pre-employment inquiries, before the offering of a job, to anyone about their handicap status. Some of the comments you have heard on the earlier panel are covered by this unique wording, and I would ask you, and I do ask in my statement for you to seriously consider that type of wording.

What the pre-employment inquiry provision does is allow the person who is otherwise deemed able to do the job to come forward before the panel evaluating their competence and to get to the point where they are offered the job before any medical evaluation is done on the individual. Upon a medical evaluation, if the person is deemed not able to do the job, the burden falls on the employer to show why they can't do the job. This, we have found, has worked very well.

On the issue of dealing with your own State agencies and their inability to comply with the law, we have done so in Massachusetts. New York City and New York State hasn't done so, as you have heard in the earlier testimony, but we have. I had to take on our Division of Personnel Administration, and because of their inability to agree with us, I had to sue them. Now clearly my Governor was not very happy that two State agencies were doing this to each other, but the legislature had spoken. They made it clear that they didn't want a one-eyed registry individual exempted from employment simply because he had one eye.

This man had a revolver license. This man had every class of automobile license. This man was clearly capable of doing the job of checking if an individual was in violation of our motor vehicle laws. He was being denied an opportunity to do so simply because he had one eye. The irony was that there were other registry people who had their jobs when their eyes were fine, who were now on the job and had one bad eye, so it was illogical to deny this man the particular job.

We told our Division of Personnel Administration that they would have to stop the pre-employment questioning, that they would have to get rid of their medical review panel, which was irrational and didn't seem to function on any particular consistent mechanism. It depended on who showed up at the meeting. You would get someone with diabetes who would get right through the panel. The next person with diabetes would not get through the panel.

We have now eliminated that panel, and we are putting the onus on every municipality in Massachusetts to make the appropriate definition of a person's capacity to do the job when they come before them, without a pre-employment inquiry as to their handicap status, with no pre-employment questioning of their ability until they have offered that job. Yes, you can eliminate them after the job has been offered, but the burden falls on the employer.

Now simply a moment on reasonable accommodation. That is an awesome responsibility to leave to the administrative agency, but we have undertaken reasonable accommodation. I don't consider myself any more reasonable than most other people, especially

anyone on the panel, but it is very difficult to define what "reasonable accommodation" is. Let me give you another for instance.

I think we would all consider it quite reasonable if a secretary who is otherwise qualified came to you in a wheelchair, to hire her or him, place them at the job place, and the only burden you really have is to have a raised desk because a wheelchair puts you a little higher than the chairs we are sitting on. That is not unreasonable, but let's talk about a developmental disability in which someone finds themselves in a wheelchair, and they have to go and work as a clerk in some store that borders some of our streets.

Now the employer, I think you would all consider it reasonable that if there is a natural barrier, that you put a slight ramp there so this employee can enter the store. It is also convenient for someone who is aged and walks with a cane and can't mount steps, et cetera, but at some point this developmental disability is going to get a little worse, and that person's arms won't allow them to wheel that chair up that pitch of a ramp, so you then make the ramp a little longer which makes it easier to get up because the pitch is lower.

At what point do we then say that the employer doesn't have to deal with this any more, and the responsibility shifts to the individual to get a motorized chair? These are the types of questions we have to deal with under reasonable accommodation all the time, and we do deal with them.

The outcome of dealing with handicap legislation in Massachusetts has been quite interesting. We find that employers, when confronted with the fact that they have violated an individual's rights, tend to take an attitude, Mr. Chairman, that says, "Oh, I'm very sorry. I didn't know." They are so willing to settle this particular type of charge, much more willing than they are on a racial discrimination charge or a sex discrimination charge or an age discrimination charge. We find that the overwhelming reality is that employers, once confronted by our agencies, will say, "Well, what can I do?" They settle these cases. The highest settlement rate we have is now in the handicap categories. I think it is saying to us in Massachusetts, and the same would be said to you here in Washington, that you did the right thing; that employers needed this extra push.

I would say that there is another piece of Title VII that at some point you should deal with, and that is to allow the commissioners in EEOC to extend another part of their administrative agency to that of having hearing officers that would internally hear cases that rose to the position of needing a hearing. We do this in my agency. We are the hearing officers, the commissioners. We find by repeating the experience we get there very quickly and we refine what the intent of legislation was a lot faster, internally within the agency. It works.

I believe both pieces of legislation ought to be passed. There is no contradiction. I congratulate you again for considering it, and I would hope that you convince your colleagues to pass it. Thank you very much.

[The prepared statement of Alex Rodriguez follows:]

PREPARED STATEMENT OF ALEX RODRIGUEZ, CHAIRMAN,
MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

MY NAME IS ALEX RODRIGUEZ. I AM THE CHAIRMAN OF THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION WHICH IS THE AGENCY RESPONSIBLE FOR ENFORCEMENT OF THE MASSACHUSETTS CIVIL RIGHTS LAWS (M.G.L.C. 151B, ET SEQ.).

ON MARCH 6, 1984 THIS LAW WAS AMENDED BY THE MASSACHUSETTS LEGISLATURE TO GIVE THE COMMISSION AUTHORITY TO INVESTIGATE AND ADJUDICATE COMPLAINTS OF DISCRIMINATION IN EMPLOYMENT AGAINST "QUALIFIED HANDICAPPED" PERSONS.

OUR EXPERIENCE IN MASSACHUSETTS, WE BELIEVE, GIVES US A UNIQUE INSIGHT INTO THE NEED FOR THE ENACTMENT OF LEGISLATION NATIONALLY WHICH WOULD GIVE HANDICAPPED INDIVIDUALS THROUGHOUT THE COUNTRY THE PROTECTION FROM DISCRIMINATION, WHICH CURRENTLY EXISTS IN ONLY A FEW STATES.

CONSEQUENTLY, IT IS MY PRIVILEGE TODAY TO TESTIFY IN SUPPORT OF H.R. 192 WHICH WOULD AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 TO MAKE DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS AN UNLAWFUL EMPLOYMENT PRACTICE.

THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964 SIGNIFIED A RECOGNITION BY THE CITIZENS OF THIS COUNTRY THAT AN EMPLOYER'S DECISION TO HIRE OR PROMOTE AN INDIVIDUAL SHOULD BE BASED UPON THAT INDIVIDUAL'S ABILITY TO PERFORM THE JOB AND NOT UPON CLASS-BASED GENERALIZATIONS AND STEREOTYPES.

WE HAVE SEEN THE IMPACT THAT TITLE VII HAS MADE OVER THE LAST TWENTY YEARS IN REMOVING ARTIFICIAL BARRIERS THAT PREVIOUSLY RESTRICTED MINORITIES AND WOMEN FROM RECEIVING THE EQUAL EMPLOYMENT OPPORTUNITY THAT IS NOW REGARDED AS A FUNDAMENTAL RIGHT IN THIS COUNTRY.

THE TIME HAS COME TO EXTEND THIS FUNDAMENTAL GUARANTEE TO HANDICAPPED WORKERS WHOSE CONTRIBUTION TO SOCIETY HAS BEEN UNJUSTLY RESTRICTED BY EMPLOYER MISCONCEPTIONS AND IGNORANCE.

OUR EXPERIENCE IN MASSACHUSETTS HAS SHOWN US THAT THIS IS A TASK WHICH SHOULD BE DONE AND WHICH CAN BE DONE BY THE ENACTMENT OF LEGISLATION WHICH IS DESIGNED TO ADDRESS EMPLOYMENT PRACTICES WHICH HAVE SERVED AS ARTIFICIAL BARRIERS TO THE EMPLOYMENT OF QUALIFIED HANDICAPPED WORKERS.

OUR EXPERIENCE HAS ALSO SHOWN US, HOWEVER, THAT IN ORDER TO BE EFFECTIVE, LEGISLATION IN THIS AREA MUST REFLECT THE REALISTIC PROBLEMS THAT WILL ARISE AS EMPLOYERS AND EMPLOYEES MAKE THE TRANSITION THAT IS NECESSARY TO PROVIDE EMPLOYMENT OPPORTUNITIES TO THESE WORKERS.

H.R. 192, AS CURRENTLY PROPOSED, WOULD AMEND TITLE VII TO SIMPLY PROHIBIT DISCRIMINATION IN EMPLOYMENT AGAINST A QUALIFIED INDIVIDUAL SOLELY ON THE BASIS OF A HANDICAP.

THE MASSACHUSETTS DISCRIMINATION LAW, HOWEVER, HAS TWO ADDITIONAL PROVISIONS WHICH WE BELIEVE HAVE BEEN VERY EFFECTIVE IN TARGETING KEY EMPLOYMENT PRACTICES WHICH HAVE HISTORICALLY OPERATED TO EXCLUDE HANDICAPPED WORKERS.

THE FIRST PROVISION MAKES IT UNLAWFUL FOR AN EMPLOYER TO DISCRIMINATE AGAINST AN OTHERWISE QUALIFIED HANDICAPPED INDIVIDUAL IF THE INDIVIDUAL IS "CAPABLE OF PERFORMING THE ESSENTIAL FUNCTIONS OF THE POSITION INVOLVED WITH A REASONABLE ACCOMMODATION TO HIS OR HER HANDICAP UNLESS THE EMPLOYER CAN DEMONSTRATE THAT THE ACCOMMODATION REQUIRED TO BE MADE TO THE PHYSICAL OR MENTAL LIMITATIONS OF THE PERSON WOULD IMPOSE AN UNDUE HARDSHIP TO THE EMPLOYER'S BUSINESS." [M.G.L.C. 151B,4(16)]

THE "REASONABLE ACCOMMODATION" STANDARD, WE BELIEVE, IS CRITICAL TO EFFECTIVE IMPLEMENTATION OF EQUAL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED BECAUSE IT REQUIRES THE EMPLOYER TO MAKE THE MINOR ADJUSTMENTS WHICH ARE REALISTICALLY NECESSARY FOR THE ADAPTATION OF THE HANDICAPPED WORKER TO HIS OR HER WORK ENVIRONMENT.

THE REASONABLE ACCOMMODATION WHICH MUST BE MADE TYPICALLY REQUIRES LITTLE COST OR EFFORT BY THE EMPLOYER. THE FAILURE TO MAKE THE ACCOMMODATION, HOWEVER, WILL RESULT IN THE PREDICTABLE EXCLUSION OF PERSONS WHO HAVE CERTAIN DISABILITIES.

FOR EXAMPLE, EMPLOYMENT OF A TYPIST WHO IS CONFINED TO A WHEELCHAIR MAY NECESSITATE THAT AN EMPLOYER UTILIZE A RAISED DESK OR MAKE OTHER MINOR ADJUSTMENTS TO THE PHYSICAL ENVIRONMENT OF THE EMPLOYEE'S WORK AREA TO ACCOMMODATE THIS HANDICAP.

WE EMPHASIZE THAT THE EMPLOYER MAY STILL SET HIGH STANDARDS FOR THE PROFICIENCY LEVEL OF THE TYPIST. HOWEVER, UNDER

MASSACHUSETTS LAW, THE EMPLOYER COULD NOT REFUSE TO HIRE A WORKER WHO HAS THE BEST QUALIFICATIONS SIMPLY BECAUSE EMPLOYMENT OF THE PERSON WILL NECESSITATE A MINOR ADJUSTMENT IN THE WORK ENVIRONMENT TO ACCOMMODATE THE INDIVIDUAL'S HANDICAP UNLESS THE EMPLOYER CAN DEMONSTRATE THAT THE ACCOMMODATION WILL IMPOSE AN UNDUE HARDSHIP ON THE EMPLOYER'S BUSINESS.

WE BELIEVE THAT THERE IS A TREND OF STATE COURTS AND AGENCIES CONSTRUING HANDICAP DISCRIMINATION LAWS TO INCORPORATE AN OBLIGATION OF THE EMPLOYER TO MAKE REASONABLE ACCOMMODATION TO AN APPLICANT OR EMPLOYEE'S DISABILITY LIMITATIONS EVEN WHERE NO ACCOMMODATION LANGUAGE EXPRESSLY APPEARS IN THE STATUTE. [E.G. CAL. ADMIN. CODE TIT. II, §7293.9(1980)]

HOWEVER, IN CONSIDERING THE IMPORTANCE OF SUCH A PROVISION TO THE ACHIEVEMENT OF MEANINGFUL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED, WE STRONGLY URGE THAT EXPLICIT REASONABLE ACCOMMODATION LANGUAGE BE ADDED TO H.R.192.

THE OTHER PROVISION THAT APPEARS IN MASSACHUSETTS LAW BUT WHICH IS NOT CONTAINED IN THE CURRENT VERSION OF H.R. 192 PROHIBITS AN EMPLOYER FROM MAKING A PRE-EMPLOYMENT INQUIRY OF AN APPLICANT AS TO WHETHER THE APPLICANT IS A HANDICAPPED INDIVIDUAL OR AS TO THE NATURE OR SEVERITY OF THE HANDICAP, EXCEPT THAT AN EMPLOYER MAY CONDITION AN OFFER OF EMPLOYMENT ON THE RESULTS OF A MEDICAL EXAMINATION CONDUCTED SOLELY FOR THE PURPOSE OF DETERMINING WHETHER THE EMPLOYEE, WITH REASONABLE ACCOMMODATION, IS CAPABLE OF PERFORMING THE ESSENTIAL FUNCTIONS OF THE JOB. [M.G.L.C. 151B, § 4(16)]

THIS PROVISION SEEKS TO ELIMINATE THE EMPLOYMENT PRACTICE OF REQUIRING INFORMATION ABOUT ONES HANDICAPPED STATUS ON AN APPLICATION WHETHER THE INFORMATION IS RELATED TO THE FUNCTIONS ON THE JOB IN QUESTION OR NOT.

SUCH A BROAD PRE-EMPLOYMENT INQUIRY RARELY PROVIDES THE EMPLOYER WITH INFORMATION THAT IS NECESSARY TO THE EMPLOYMENT DECISION, BUT THE INFORMATION DISCLOSED FREQUENTLY DISPOSES THE EMPLOYER AGAINST HIRING AN INDIVIDUAL WITH EVEN A MINOR MEDICAL PROBLEM.

THE MCAD'S EXPERIENCE IN ENFORCING THIS PROVISION CONFIRMS THAT THIS PRACTICE IS WIDESPREAD AND THAT IT RESULTS IN THE SYSTEMATIC EXCLUSION OF QUALIFIED WORKERS DUE TO THE DISCLOSURE OF MEDICAL PROBLEMS WHICH WOULD NOT OTHERWISE BE READILY APPARENT TO THE EMPLOYER. OVER THE PAST YEAR, A CLEAR MAJORITY OF CASES FILED WITH THE MCAD HAVE INVOLVED COMPLAINTS OF DISCRIMINATION BECAUSE OF SUCH HIDDEN DISABILITIES AS EPILEPSY, BACK INJURIES, AND DIABETES.

OUR INVESTIGATION OF THESE CASES HAS REVEALED THAT, MORE OFTEN THAN NOT, AN EMPLOYER WILL REFUSE TO HIRE SUCH INDIVIDUALS FOR ANY POSITION BECAUSE OF THE EMPLOYER'S MISCONCEPTION OF WHAT LIMITATIONS, IF ANY, ARE IMPOSED ON THE WORKER BY SUCH A MEDICAL CONDITION AND BY ITS FEAR, USUALLY UNJUSTIFIED, OF SKYROCKETING INSURANCE RATES AND SAFETY HAZARDS.

A RECENT STUDY CONDUCTED BY E.I. DU PONT DE NEMOURS & CO. CLEARLY DEMONSTRATES, HOWEVER, THAT THE EMPLOYERS' FEARS ARE WITHOUT BASIS IN FACT.

THE STUDY FIND NO INCREASE IN COMPENSATION COSTS AND NO LOST-TIME INJURIES DUE TO EMPLOYMENT OF HANDICAPPED WORKERS.

FURTHER, NINETY-EIGHT PERCENT OF THE HANDICAPPED EMPLOYEES RATED AVERAGE OR BETTER ON SAFETY, AND MORE THAN HALF OF THOSE RATED ABOVE AVERAGE. "EQUAL TO THE TASK, 1981 DU PONT SURVEY OF EMPLOYMENT OF THE HANDICAPPED", 6-9 (1982).

ADDITIONALLY, THE DU PONT STUDY SHOWED THAT NINETY-ONE PERCENT OF THE DISABLED RATED AVERAGE OR BETTER IN JOB PERFORMANCE, NINETY-THREE PERCENT RATED AVERAGE OR BETTER IN JOB STABILITY, AND SEVENTY-NINE PERCENT RATED AVERAGE OR BETTER IN ATTENDANCE.

SINCE IT IS CLEAR THAT EMPLOYMENT DECISIONS AFFECTING THE HANDICAPPED ARE TOO OFTEN BASED UPON MYTH RATHER THAN FACT, WE BELIEVE THAT ENFORCEMENT OF HANDICAP DISCRIMINATION LAW REQUIRES THAT THE LAW RESTRICT THE MEDICAL INFORMATION WHICH EMPLOYERS MAY ELICIT PRIOR TO AN OFFER OF EMPLOYMENT.

WE BELIEVE THE PRE-EMPLOYMENT RESTRTICTION CONTAINED IN THE MASSACHUSETTS LAW HAS BEEN EFFECTIVE IN ELIMINATING UNLAWFUL SCREENING PRACTICES.

ACCORDINGLY, WE SUGGEST THAT H.R. 192 BE AMENDED TO INCLUDE THE SAME OR A SIMILAR PROHIBITION.

WHILE WE ARE PROUD OF THE PROGRESS THAT THE COMMONWEALTH HAS MADE IN ELIMINATING DISCRIMINATION AGAINST HANDICAPPED WORKERS

IN THE STATE, WE RECOGNIZE THAT MEANINGFUL EMPLOYMENT OPPORTUNITY FOR HANDICAPPED CANNOT BE ACHIEVED UNLESS THE NATION AS A WHOLE EMBRACES THIS GOAL.

ENACTMENT OF FEDERAL LEGISLATION IN THIS AREA WILL PROVIDE UNIFORMITY AND CONSISTENCY TO THIS EFFORT. ANY TAX DOLLARS WHICH MUST BE EXPENDED TO ENFORCE THIS LAW WILL EASILY BE OFFSET BY THE SAVINGS WHICH WILL RESULT AS JOB OPPORTUNITIES ARE CREATED FOR PERSONS WHO HAVE PREVIOUSLY BEEN FORCED TO RELY UPON PUBLIC FUNDS FOR SURVIVIAL.

FOR ALL OF THESE REASONS, WE SUPPORT ENACTMENT OF H.R.192.

FINALLY, BEFORE CLOSING OUR COMMENTS WE NOTE THAT IN ADDITION TO H.R. 192, THE COMMITTEE ALSO HAS BEFORE IT A BILL TO AMEND TITLE VII TO BAR DISCRIMINATION AGAINST A PERSON ON THE BASIS OF CANCER HISTORY.

ALTHOUGH WE AGREE THAT DISCRIMINATION OF THIS NATURE SHOULD BE PROHIBITED, WE BELIEVE THAT PERSONS WHO HAVE A HISTORY OF CANCER WOULD BE CONSIDERED QUALIFIED HANDICAPPED PERSONS ENTITLED TO THE PROTECTION THAT ENACTMENT OF H.R. 192 WOULD PROVIDE.

Mr. MARTINEZ. Thank you very much, Mr. Rodriguez.
We will now go to Mr. Kiernan.

STATEMENT OF WILLIAM KIERNAN, DIRECTOR OF REHABILITATION, DEVELOPMENTAL EVALUATION CLINIC, CHILDREN'S HOSPITAL

Mr. KIERNAN. Thank you. My name is William Kiernan. I am the director of the Training and Research Institute for Adults with Disabilities at Boston College, and the Director of Rehabilitation at Boston Children's Hospital. I want to thank you, Mr. Chairman and members of the committee, for the opportunity to testify in behalf of H.R. 192. I have written and prepared testimony that would fill you in on some of the areas, but would like to summarize this fairly briefly.

Employment and work plays a fairly significant role in our lives. It establishes an identity. It establishes peer groups. It also establishes one's level of economic self-support. If you don't believe that, you only have to look. In fact, in social gatherings the second most frequently asked question is, "What do you do?"

For individuals with handicaps, employment frequently isn't an option. Even when unemployment rates nationally are at 6 and 7 percent, and in some instances locally are at 2 and 3 percent, we still find in 1983 the U.S. Commission on Civil Rights indicating that 50 to 70 percent of persons with disabilities were unemployed. A Harris poll done just recently, within the last year, surveying 1,000 persons who were disabled, indicated that 67 percent of those surveyed were unemployed. One might say that maybe that was because they didn't want to work. A second question in the Harris poll asked those individuals, "If there was a job available, would you take it?" Seventy percent of that group said yes.

In the past, for persons with disabilities the options were generally unemployment or sheltered employment. Two more recent options are supported and transitional employment. There are new technologies and new approaches that are clearly indicating opportunities for persons to enter employment.

A national survey on employment of adults with developmental disabilities done in 1986, surveying 2,506 agencies, organizations and facilities providing vocational services to adults with developmental disabilities noted that 62,400 persons with developmental disabilities were placed into competitive, transitional, or supported employment within that 12-month period. What does that translate into? It translates into gross annual earnings for that 12-month period for that group of individuals, of between $235 and $250 million. The benefits, when we look at them from taxes paid, reduction in transfer payments, reduction in alternative program costs, and contributions to social security, the benefits for that group in a 12-month period range from $206 to $281 million.

Economic benefits, though, are not the only gain. For persons who are disabled, when they enter employment, there is a significant enhancement in the quality of their lives, but it is not only the individual who realizes a gain, it is also industry. Industry realizes a gain by, in fact, when there is a good person-environment match, a reduction in cost of job turnover. With the shrinking

labor source, we are finding out that industry has a great need and that the opportunities for employment of persons with disabilities are increasing.

Looking at that information, a second survey done by the Harris poll, surveying 1,000 industries and interviewing chief executive officers, affirmative action officers and line managers in large and small industries looked at a variety of persons who are disabled to obtain the impression of industry as to persons with disabilities. The results of that survey showed some interesting findings.

The most particular finding was that in fact there were some barriers to employment for persons with handicapping conditions. Thirty percent of those industries that were surveyed had formal written policies indicating that they would hire persons with disabilities, yet 75 percent of the managers surveyed felt that persons with disabilities were good workers. A substantial majority supported the concept of civil rights protection for persons with disabilities. Those industries that had written policies and stated policies that enhanced employment opportunities for persons with disabilities, by far place many more persons with disabilities into employment. It is clear that industry has a need, that industry is willing, that industry in fact is looking at opportunities such as H.R. 192.

Let me conclude by just drawing a few observations. One, it is clear that employment for handicapped individuals is economically, socially, and psychologically sound. Two, with the shrinking labor resource there are many more opportunities for persons with disabilities in the labor market. Three, H.R. 192 is a necessary incentive for industry for the creation of jobs but also for the incentive to develop career ladders for persons with disabilities. Lastly, it is time we looked at employment as not a privilege but a right and an opportunity for all adults.

Thank you for the chance to testify in this committee.

[The prepared statement of William E. Kiernan follows:]

PREPARED STATEMENT OF WILLIAM E. KIERNAN, PH.D., DIRECTOR, TRAINING AND RESEARCH INSTITUTE FOR ADULTS WITH DISABILITIES, BOSTON COLLEGE, CHESTNUT HILL, MA

I am William E. Kiernan, Ph.D, the Director of the Training and Research Institute for Adults with Disabilities, a joint program sponsored by the Boston Children's Hospital University Affiliated Program and the Division of Special Education and Rehabilitation at Boston College. I am pleased to have the opportunity to testify before the sub-committee on Employment Opportunities of the Committee on Education and Labor in support of H.R. 192 entitled "An Amendment to Title 7 of the Civil Rights Act of 1964 to Make Discrimination Against Handicapped Individuals an Unlawful Practice."

For each of us our job serves not only as a means of establishing economic independence but in many instances establishes our identity in this society, our peer group, and provides us with a sense of self worth. The opportunity to work is in many ways similar to the basic rights established as a result of being a citizens of these United States. The opportunity to work ought to be viewed as not just an option but a right, thus all citizens of the United States, be they able-bodied or disabled, must be given an chance to exercise that right. H.R. 192, submitted by Congressman Moakley and his colleagues, clearly establishes employment as such a right for persons with handicapping conditions.

Expanding opportunities for persons with handicaps to enter employment serves not only to enhance the independence of the individual but also to enable industry to capitalize upon the abilities of this frequently untapped labor resource. From an economic perspective, measures such as unemployment rates and levels of productivity are used to reflect the health of society in general. Such measures as economic well being serve to further reinforce the importance of work as a desirable and acceptable activity. Unfortunately, as has been noted by the U.S. Commission on Civil Rights (1983) the unemployment rate for persons with disabilities was reported to be between 50% to 75%. A survey conducted by the Lou Harris Associates in conjunction with the International Center for the Disabled further documents that 2/3 of the 1000 disabled persons surveyed were unemployed. More notably, this survey identified that those individuals who were unemployed were unemployed not out of conscious choice or preference but out of lack of opportunity. Nearly 70% of those persons with disabilities who were unemployed expressed a willingness to go to work if employment were available to them.

In the past sheltered employment or unemployment were the only options available for persons with disabilities. The establishment of supported and transitional employment designs

has clearly documented that persons with various handicapping conditions can enter competitive employment when appropriate person-environment matching strategies and supports are provided.

The "National Employment Survey for Adults with Developmental Disabilities," reported more than 22,500 adults with developmental disabilities entered competitive, transitional or supported employment from 10/1/84 to 9/30/85. Based upon the actual data received and the telephone interviews it could be projected that if all 2,506 agencies, facilities and organizations surveyed had reported, approximately 62,400 adults with developmental disabilities were placed into transitional, supported, or competitive employment during that twelve month period.

Of this group, adjusting for those persons who may not remain on the job for the full twelve month period, it was estimated that gross earnings for this group would range from $235 to $250 million annually. Calculating the benefits, attributable through taxes paid, reductions in transfer payments, reduction in alternative program costs, and contributions to Social Security, the return to society in a similar 12 month period ranged from $206 to $281 million annually.

It is clear from this national data base that the economic return realized through employment of adults with handicapping conditions is significant. These benefits include tax revenue (income and other sales and usage taxes), reduction in alternative program costs, and reduction in dependency on third party supports. However, these obviously are not the only benefits realized through employment. Industry realizes gains of increased production and reduced job turnover costs when there is a good match between the worker's ability and the demands of the job. Society realizes economic and humanitarian gains by having a contributing member rather than one that is dependent. Adults with handicapping conditions also realize gains through increased disposable income, improved quality of life, and increased sense of self worth.

From all perspectives, the increased emphasis on and activity within employment placement makes good sense, economically, socially, and emotionally. The movement to create employment opportunities for adults with handicaps is one which has broad based support and one in which there should be continued investment from government, industry, professionals, parents, and the adult with a handicapping condition.

The benefits realized by society through the employment of persons with handicapping conditions is only half of the story when in fact employment opportunities for such persons are provided. A national survey entitled, "Employing Disabled Americans," conducted by Lou Harris and Associates in conjunction with the National Council on the Handicapped and the President's Committee on Employment of the Handicapped through the International Center for the Disabled, documents clearly industry's perception of the abilities of persons with handicapping conditions. A clear majority of managers gave employees with handicaps good to excellent ratings in their overall job performance. Furthermore, it was felt that the vast

majority of persons with handicapping conditions could be accommodated with minimal additional expenses to the industry.

An identified barrier to the employment of persons with handicapping conditions is that few companies have established specific policies or programs for the hiring of employees with handicaps. Only 30% of the 1,000 managers surveys indicated their company had a written policy regarding the employment of persons with handicapping conditions. Job discrimination remained one of the most persistent barriers to increased employment of persons with handicaps. Nearly 75% of the managers surveyed felt that persons with handicaps encountered discrimination from employers. A substantial majority of all types of managers surveyed were supportive of the concept of Civil Rights laws which protect minorities against discrimination should also reflect protection for persons with handicaps.

It is clear that employment opportunities for adults with handicapping conditions is a sound economic, social and cultural activity. The reduced labor force available to industry has brought about an increased awareness among organizations of the abilities of persons with various handicapping conditions. The establishment of a right to employment opportunities for such persons would serve as the reason for the creation of not only initial jobs but also career mobility for persons with handicaps once they have established themselves as able workers.

H.R. 192 clearly establishes that discrimination against individuals with handicaps is an unlawful employment practice. Such a law is necessary to encourage those industries which have been reluctant to provide employment opportunities for individuals with handicaps to do so and likewise to encourage those companies which have hired individuals with handicaps to support opportunities for career advancement as abilities are demonstrated. H.R. 192 is timely given the changes in labor resources that exist in this country and the change from a manufacturing to a service industry. The increased awareness of the abilities of persons with handicaps along with the incentives for industry to encourage employment opportunities through legislation such as H.R. 192 will only serve to further reinforce the move for individuals with a handicapping conditions from dependent citizens to economically self sufficient, fully participating members of society. I would strongly urge you to consider H.R. 192 as a means for enhancing employment opportunities for adults with handicapping conditions. Employment ought not be viewed as a privilege but as a right and opportunity for all adults in this country.

Thank you for your attention and for the chance to present my testimony in behalf of H.R. 192.

Mr. MARTINEZ. Thank you, Mr. Kiernan.
We now turn to Mr. Davila.

STATEMENT OF ROBERT DAVILA, VICE PRESIDENT, PRECOLLEGE PROGRAMS, GALLAUDET UNIVERSITY

Mr. DAVILA. Mr. Chairman, thank you for the opportunity to come before this committee this morning. Before I begin my testimony, I would like to explain to you and the members of this committee that I cannot hear myself speak. Therefore, sometimes it is difficult for me to speak with clarity. I ask for your patience and understanding.

Mr. MARTINEZ. So far you're doing fine, Mr. Davila.

Mr. DAVILA. Thank you.

I am honored to speak on behalf of H.R. 192, and I would like to express my appreciation to all the members of the committee. The goals of H.R. 192 are the same goals that my employer, Gallaudet University, has pursued for over 120 years. Our president of the University, Dr. Jerry C. Lee, our members of the Board of Trustees, which includes a member of this subcommittee, the Honorable Steve Gunderson, our faculty, staff and students at our university all support the measure that we are discussing today.

Discrimination in any form is without merit, but I believe it is most evident when the following three conditions exist: one, where the education of a special population is perceived to be inadequate; two, where costs of accommodating the special population in the workplace are perceived to be prohibitive; and, third, where employer sensitivity and awareness of the special population's requirements is insufficient.

In elaborating on these themes, it might be helpful to tell you a little about myself and something about my personal background. I am a Hispanic American from California, and I lost my hearing in my preschool years. I received my elementary and secondary education in the California School for the Deaf at Berkeley. In later years I earned my B.A. degree from Gallaudet University, and subsequently a Master of Arts degree from the City University of New York and a Doctor of Philosophy degree from Syracuse University. I am today vice president of an educational institution that serves 2,600 students of all ages, elementary school years through graduate school, and has 1,300 employees.

I offer my testimony today not as an expert on employing the disabled but rather as a representative of the many fully productive and taxpaying disabled American citizens—disabled, yes, but not by any unwillingness or lack of enthusiasm to become a part of the American mainstream.

I wish we didn't need this amendment because we know that there is no discrimination against the disabled, but that is not correct. The disabled need protection under law. They also need opportunities for education and training to qualify for gainful employment.

During recent hearings before the Senate on the tenth anniversary of the passage of Public Law 94-142, the Louis Harris public polling firm reported on its survey of handicapped Americans. This survey was commissioned by the National Council on the Handi-

capped. Among the findings, it was found that a vast majority of disabled American citizens reported that they were either unemployed or underemployed, and a sizable part of this disabled population also considered that their education and training was inadequate when compared to the general population.

If I may share with the committee our experience at Gallaudet as a means of highlighting the importance of education, we are very proud of our own record. It is estimated that about two-thirds of all deaf Americans who hold college degrees have earned them from Gallaudet. I include myself in that number. When compared to the disabled population as measured by the Harris organization, our graduates represent the higher levels of educated disabled citizens. I am pleased to report that they fare well when compared to the general population. Our graduates' income and employment statistics are highly favorable.

Yet all of this does not come easy. It represents great sacrifice and great effort on the part of deaf Americans to seek employment and opportunity. In an alumni survey a few years ago of Gallaudet graduates, the statistics provide a very good insight into the role of education as it affects the lives of deaf Americans. We found that our graduates on the whole compare very favorably with graduates of other universities.

Turning to the issue of costs of accommodating the handicapped, I believe this committee will hear comments regarding the high costs of rendering an organization and its facilities fully accessible to the handicapped. I will not dispute that claim. At Gallaudet, for example, we have the highest concentration of deaf employees you would find anywhere in this world. Twenty-five percent of our employees are deaf. We also have employees who are visually handicapped, as well as mobility handicapped. We have made architectural changes and provided the continuing support systems that such a population requires, and this has not come without considerable expense.

However, I will submit to this committee that there is a higher cost to be paid without these changes and without vital education for this population. These costs come in the form of social welfare transfer payments, unemployment compensation and social security disability benefits. Those costs, manifested in the form of higher State and Federal taxes, in the long run prove to be a higher expense for this country. It is the tax revenues foregone because of unemployment and underemployment of the disabled population that we need to be concerned with.

At Gallaudet University we have had some solid experience in trying to create learning and employment opportunities for deaf students. We have at Gallaudet a cooperative off-campus program that supports the placement of our students in industry while they are still students, where they can get needed experience and training in preparation for graduation and the years beyond. More important than that, this opportunity to place students in industry gives us also the opportunity to work on the attitudes and to develop support for students in the general community.

These programs not only provide opportunities for real-life work, but the university also works hard to sensitize employers and to help them discover the positive values and contributions of deaf

employees. This program could well be a model for many other disability groups as well. Over 300 companies in recent years have taken in students from our university, and one of the results from this effort has been that these students have created a very positive impact and have been able to demonstrate their ability and their potential as employees. For many of them, that training leads to full-time employment. We believe this effort also is valuable.

By my comments today, I hope that I have helped to shed some light on the value of this bill to amend the Civil Rights Act. I believe it is only morally proper to include handicapped Americans as a group with basic civil and human rights. I also believe that it is practical and cost-effective to do so.

Thank you for this opportunity to speak before you. I will be happy to respond to any questions you have. Thank you.

[The prepared statement of Robert Davila follows:]

PREPARED STATEMENT OF DR. ROBERT DAVILA, VICE PRESIDENT—PRECOLLEGE PROGRAMS, GALLAUDET UNIVERSITY, WASHINGTON, DC

Mr. Chairman:

I am pleased and honored to be here today to testify in support of H. R. 192, which proposes to amend Title VII of the Civil Rights Act of 1964 to include handicapped individuals. I would like to extend my appreciation to the Chairman and the members of this subcommittee for this opportunity, as it upholds a cause for which my employer, Gallaudet University, has worked toward for more than 120 years. On behalf of our president, Dr. Jerry C. Lee, our Board of Trustees, which includes a member of this committee, the Honorable Steve Gunderson, our students, faculty and staff, I am most pleased to represent an organization which educates and employs a sizeable number of disabled Americans, and to provide for you our perspective on this worthy bill. I will focus my comments on three themes this morning, and afterwards, will be most happy to respond to any questions you may have.

Discrimination in any form is without merit, but I believe it is most evident where the following three conditions are present:

1. Where the education of a special population is perceived to be inadequate.

2. Where the costs of accommodating the special population in the workplace are perceived to be prohibitive.

3. Where employer sensitivity and awareness of the special population's requirements is insufficient.

In elaborating on these themes, it may be helpful to you if, initially, I outline my background. I am an Hispanic American originating from the state of California. At an early age, I was deafened from an illness and my hearing loss is profound. I stand before you today as the vice president of an educational institution that serves over 2600 students elementary through collegiate level programs, and employs some 1300 employees. I achieved this position after dedicating my earlier years to the pursuit of education, which took me from California, to Washington, D.C. and Gallaudet College for my undergraduate training, to New York and Syracuse University for the successful but difficult acquisition of my doctoral training.

I offer my personal testimony today not as an expert on employing the disabled, but rather as a representative of the many fully-productive and tax paying disabled American citizens. Disabled, yes -- by virtue of our respective physical handicaps -- but not by any unwillingness or lack of enthusiasm to become a part of mainstream America.

It seems logical that the various sectors of our American society would not discriminate against the handicapped -- and

that we would not need this amendment -- but it does happen. I believe that we need only turn to our educational processes in this country and the traditional ways in which particular segments of the population have improved their standing, to recognize education as a primary key to expunge discrimination of the disabled.

During recent hearings before the Senate on the tenth anniversary of the passage of P.L. 94-142, the Louis Harris public polling firm reported on its survey of handicapped Americans. This survey was commissioned by the National Council on the Handicapped. It is interesting to note that despite their various levels of education, a vast majority of disabled American citizens reported that they were either unemployed or underemployed. It also was regrettable to note that this sizeable part of our population perceived the education they acquired as inadequate when compared to that of the general population.

If I may share with the committee our experience at Gallaudet as a means of highlighting the importance of education, we are very proud of our record. It is estimated that approximately two-thirds of the deaf Americans today who hold baccalaureate degrees received them from Gallaudet University. When compared to the disabled population as measured by the Harris organization, our graduates represent the higher levels of the educated disabled population. I am pleased to report that they fare well in comparison to the general population, as well. Our graduates' income and employment statistics are highly favorable.

Yet, I know that this has not come without a great deal of personal sacrifice and struggle in which their disability has played a major inhibiting role. I have brought along copies today of an alumni survey that Gallaudet conducted several years ago. This provides you with the statistics I referenced earlier, but it also provides an insight into the role of education in the lives of disabled Americans.

Turning to the issue on the costs of accommodating the handicapped, I believe this committee will hear comments regarding the high costs of rendering an organization and its facilities fully accessible to the handicapped. I would not dispute this claim. At Gallaudet for example, we have what I speculate is the highest concentration of deaf employees in a single location in this country; twenty-five percent of our workforce is deaf. We also have many employees who are visually disabled and mobility disabled. We have made the architectural changes and provided the continuing support systems that such a population requires. And, this has not come without a considerable expense.

However, I submit to this committee that there is a higher cost to be paid without these changes and without vital education for this population. These costs come in the form of social-welfare transfer payments; unemployment compensation and social security disability benefits. Those costs -- manifested in the form of higher municipal, state and federal taxes -- fund an infrastructure of support for those that are perhaps precluded unnecessarily from meaningful and productive employment. It is tax revenues foregone because of unemployment or underemployment of the disabled population.

I do not want to characterize to this committee that we face an intransigent problem. Rather, all of us look toward a hopeful situation in which, I believe, Congressman Moakley's bill will guide many organizations and employers to move

further in the direction of enlightened awareness of handicapped Americans. I spoke earlier of removing the architectural barriers to full employment and providing appropriate support systems so that disabled workers can join the mainstream. The most difficult barrier and one to which we cannot attach a cost, is employer sensitivity and awareness of the disabled. At Gallaudet, we have some solid experience and a proven track record on that score.

Gallaudet's Experiential Programs Off Campus (EPOC) is not your usual cooperative training program housed on a university campus. Although we do use the same philosophy -- giving students the opportunity to gain experience in the workforce through a willing employer while the student is in school -- Gallaudet's program requires a much more extensive effort to sensitize employers to the value of our students and acquaint them with a basic understanding of deafness.

I can tell you that it is a successful program, and one that can serve as a model for employers to emulate nationwide. We now have over 300 employers nationwide who at one time or another employ our students in cooperative jobs. They range from the smallest of businesses to the largest such as IBM and MCI, and include federal and non-profit organizations as well. I can report with accuracy that attitude is the chief barrier, because we know that we have seen a tremendous transformation in the perspectives of the supervisors who employ our students. They become advocates within their companies, and they help us convince other employers that hiring a disabled employee can be a mutually-rewarding experience. Many times, they hire the student on a full time basis after his or her graduation.

By my comments today, I hope that I have helped to shed some light on the value of this bill to amend the Civil Rights Act. I believe that it is not only morally proper to include handicapped Americans as a group with basic civil and human rights, but I believe that it is practical and cost-effective to do so as well.

Thank you for this important opportunity. I will respond to any of your questions.

Mr. MARTINEZ. Thank you, Mr. Davila.

I am going to turn to Major Owens because he has a very important meeting that he has to go to, and he would like to make a comment before he leaves. Major?

Mr. OWENS. Yes. Thank you for your indulgence, Mr. Chairman.

I have no questions. I just wanted to thank all of the witnesses for testifying and, as the chairman of the Subcommittee on Select Education, which has a great responsibility for a number of programs for the handicapped, I sat and listened with great attentiveness. I do appreciate the testimony and have learned a great deal.

I think a dual purpose has been served by your holding this hearing, and I want to thank you for it. Thank you very much.

Mr. MARTINEZ. Thank you, Major. Thank you for joining us today.

I have one question which I would like to ask each of you. I had three questions to begin with, trying to keep within the 5-minute rule. You answered two of them in your testimony. Mr. Rodriguez, you answered the first question I had about reasonable accommodation, and you answered the second, Mr. Kiernan, about the cost savings of providing work for the handicapped individual as opposed to excluding them.

Then I will turn to my third question and ask each of you to respond. That is, will all of the legal precedents from sections 504 and 503 of the Rehabilitation Act covering the public sector be carried over into the private sector? You see, there have been precedents already established by that and now we are actually adopting this for the private sector. I am hopeful that those precedents that have already been set in law will carry over, and that we would be that much more effective by it. Mr. Kiernan first.

Mr. KIERNAN. I think your question is, what have we learned by 503 and 504 that we can bring into those organizations or industries that are not covered by them? I think one of the things that is more striking in our research is that if companies make a verbal commitment to employing persons with disabilities, they are far less effective than when they write it in policy, and they have written policies as to employment opportunities for persons with disabilities.

The other point that is striking to us is that for the most part, our best estimate is that 58 percent of the jobs that are created will be by small industries or small businesses as opposed to large industries that generally are under the rule of 503 and 504. What we would look for is that in 503 and 504, to learn something about what Alex had referred to before, reasonable accommodation. Our best guess is that the cost of reasonable accommodation is under $90. It is not terribly expensive but in fact when we do good person-environment matching, we find that in fact that the person is a fairly productive worker.

The cost per job turnover is in excess of two months of salary for an hourly worker and in excess of six months of salary for a salaried worker. Our example is one company that spent $16,000 in advertisement alone to hire for a $17,000 position, so person-environment matching is one of the things that we would look forward to. If companies are committed to looking at persons with disabilities as a viable labor resource and making a written commitment to

the employee, I think we will find that they will be much more effective. That is one of the lessons, I think, probably from the 504, is more of a much stronger commitment to employment.

Mr. MARTINEZ. Very good.

Mr. Davila?

Mr. DAVILA. I agree with my colleague here. I believe that we need to broaden protection for disabled citizens, now limited to programs who receive Federal support, to cover the general industrial community as well.

Mr. MARTINEZ. Thank you.

Mr. Rodriguez?

Mr. RODRIGUEZ. In my written testimony I cite again the "Equal to the Task" 1981 duPont report, which gives very specific accomplishments of the hiring of handicapped in the workplace. It talks about 98 percent of the handicapped rated average or better of safety, and more than half of those rated above average.

The issue of added-on cost to industry is negligible in terms of the types of people that we have to accommodate in the workplace. The benefits to society are overwhelming, obviously, if we have taxpayers and wage-earners as opposed to people who have to be supported in some mechanism. There is no question what the benefits to society are.

In our experience, again, in Massachusetts we found that it has just worked so well, and yet we found that when given the coverage of the law, those people who have had difficulty getting the law to work do come out of the woodwork. They do come before us. We have 600 cases a year now, from zero to 600. As I said, 20 percent of our employment case load is coming to us from the handicap legislation that we have enacted.

In all civil rights employment discrimination measures, it has always been a 400 to 1 measurement. That means for every case reported, 400 people did not report a case or 399 did not report a case. If you project that out to 600, we are talking about 240,000 people in Massachusetts felt at some point that they were discriminated against because of handicap reasons. That is a huge number of people, and when we take the States represented on the panel here—New York, California, and Illinois—we have a problem within our States. That's what it tells me.

This protection is badly needed, and it is needed on the national level through EEOC, which has shown a great competence in protecting people under the litany of legislation that we have allowed them. We are denying a segment of the population something that we all cherish, that we all want—access to the workplace, access to show our abilities, not to be denied because of our disabilities.

Mr. MARTINEZ. Thank you, Mr. Rodriguez.

Mr. Hayes?

Mr. HAYES. I don't have any questions. From the testimony I have heard and from my brief chance to view some of the written statements, they certainly indicate support for both pieces of legislation on the part of the two panels here this morning, and I have no problem with supporting our colleague Mr. Biaggi's bill and/or Congressman Moakley's bill. However, I want to caution you, given the trend and the direction that this administration has gone in terms of its attitude towards monies to help in social programs or

to educate people, it is going to be very difficult to get passage, so any help that you can give with the organizations you represent I am sure would be welcomed by all of us here on this subcommittee.

Mr. MARTINEZ. Thank you, Mr. Hayes.

Mr. Biaggi?

Mr. BIAGGI. Mr. Rodriguez and Mr. Kiernan, you both made reference to reasonable accommodation. Have you found yourselves in positions where you have simply had to deny the handicapped individual?

Mr. RODRIGUEZ. Yes. As I say, when you get the number of cases that we get, let me look specifically at those that dealt with State personnel reasons. Public safety tends to be one of the areas of concern, the quiet opposition to which both Mr. Moakley and you, Mr. Biaggi, are trying to do.

The public safety community tends to be our big nemesis. They are quiet because they are embarrassed. They don't want to come right out and say, but the public safety community tends to want an Aryan race working for them. They want that very tall, big, strong white policeman who is physically capable and has no history of any physical impairment of any sort. For years, if that is what they wanted, they have been hiring that person. Let's look at the rate of the person dropping out for particular injuries that they incur, which is part of the illogic of their argument, but that is where we get our greatest resistance.

I do believe that we have to be rational about the issue of what people do on their jobs, and public safety jobs are the types of jobs in which at any moment of the day one might be called upon to jump out of that policeman or woman's car and give chase for one mile. Obviously if one has a serious heart condition there is some question as to whether that person is otherwise qualified under the reasonable accommodation rule. We have tried to be very reasonable, but what you find is that the situations that you expect are not the ones that come up.

We are not seeing in our case load the wheelchair-bound individual, the deaf individual, the blind individual. Those are some of the cases we get. We are seeing predominantly the nonvisible handicaps—the back injuries, some other injuries that individuals have incurred during their life or some other diseases that come up. We find that overwhelmingly, that almost any sector of private employment can accommodate these people. When it comes to the visible disabilities, we also find that accommodation is possible if people think the process out.

On the other hand, as you asked your question directly, there are people who go through an employment panel, a medical panel at a local town level, for instance, for employment, or in a private business, and in fact they cannot be accommodated. I can give you certain for instances. Obviously, there is one case we had of a person who could not stay awake—and maybe Dr. Kiernan can talk about what the disease was, I can't remember the name—would fall asleep on the job. The person was working around dangerous machinery. Now his safety was concerned, the liability of the company was concerned. After we had enough information, we ruled in favor of their removal of that person. He didn't lose a job, he had to be

shifted, and he got paid union-wise better at that job than where he had been shifted from.

Mr. BIAGGI. Well, that's reasonable.

Mr. RODRIGUEZ. That's reasonable.

Mr. BIAGGI. How about the barriers? How far must an employer go?

Mr. RODRIGUEZ. Well, we know we have covered architectural barriers through other legislation, on new buildings and when you do major rehabilitation. We know that. Again, I gave you the example of the wheelchair ramp. That is again reasonability. What is it going to cost you? If it's a ma and pa shop and you're telling someone to make a $100,000 investment, you have to look at this. That is the awesome responsibility that goes to those law enforcers and why I say, Mr. Biaggi, I would rather it go to law enforcers who had repetitional history because they could tackle those issues of reasonability better, rather than having it distributed through district courts and State courts all over the country where you are going to get so many contradictory——

Mr. BIAGGI. It would seem to me that anyone who is honest, logical and reasonable could deal with this in a fair and equitable fashion.

Mr. RODRIGUEZ. We have had—you know, I have looked for the absurd case with the unreasonable employer taking the stand that Government is imposing and you should have nothing to do with it. It just doesn't exist. We don't get that type of employer. Most of them say, "Oh, that's all I had to do? I didn't even think about it. I'll take him back. I'll take her back, and we'll work it out."

Mr. BIAGGI. Mr. Kiernan?

Mr. KIERNAN. Mr. Biaggi, I would probably answer it in two fashions. One is in looking at a person who is looking at their initial job or their first job. We all remember our very first jobs, our paying jobs. They weren't too terribly challenging in some instances but they at least got us into an employment history.

Sometimes what we are talking about with reasonable accommodation in the programs that we run, which are work training programs for persons who are more seriously disabled, sometimes it will be modifying the job requirements or in fact giving people crib sheets or instruction sheets so that in fact they can complete the tasks, so reasonable accommodation doesn't necessarily mean changing the architecture or structure of the building as much as it might be changing the tasks involved. Many companies are quite willing to do that, particularly when they have a 30 or 40 percent vacancy rate in that position.

The question that was raised before by Mr. Hayes is that one of the statistics that we look at is that there are going to be 25 percent fewer 19-year-olds in 1995 than in 1985, so that the education process is one where industry has a major need and a major shortage of labor resource. They are right to listen in some instances, although sometimes they don't listen too closely, so we need to educate them in some instances.

The other one is the example of an individual who would be employed and experience a traumatic injury. That becomes a little bit more difficult, because you may have a person who has been employed and performing quite well, who experiences a head injury.

This is one of the more frequent examples that is cited, and in fact because of residual brain damage they cannot go back to their task. In some instances the company will try and reshuffle a position. In some instances what you need to do is work with the individual, to reassess their level of functioning and their capacity to perform.

One of the strategies that has been used by certain industries, larger industries, is to use the Employee Assistance Programs. The EAP's that were originally designed for alcohol and drug-dependent individuals have now broadened out to family stress management and also accommodation for persons with various disabilities, so we are seeing more and more of that in industry as the labor shortage becomes more acute.

I guess the last point is that one of the—you mentioned barriers, and I suspect that one of the barriers that we all have—we can list them all, but one of the barriers that I think is the more significant of all is perception. Congressman Moakley noted that before. A friend of mine who is disabled came up with a bumper sticker one time that I think says it all. He said that the bumper sticker should read, "My handicap is your attitude."

Mr. BIAGGI. Thank you very much.

Mr. MARTINEZ. Thank you, Mario.

Yes, that's a very good way to put it. We had Ted Kennedy, Jr. testify before us, and he said he preferred to use the terminology "physically challenged" rather than "handicapped." That is pretty much the same thing, and I agree with it.

Let me say that, Mr. Rodriguez, as you testified before us before, your testimony was very enlightening and very enthusiastic and a very sincere concern, and we appreciate that.

Mr. Kiernan, your knowledge is vast, I can see, and your testimony was very valuable.

Last but not least, Mr. Davila, you said in your testimony something that is something that we should repeat often, and I am going to say it again. You submitted to this committee that there is a higher cost to be paid without these changes and without vital education for this population. These costs come in the form of social welfare transfer payments, unemployment compensation and social security disability benefits. We can't say that often enough. If you really look at the overall picture, we are a lot further ahead in providing, as Mr. Rodriguez has said, dignity to the individual, than we would be if we don't do anything.

In closing and in adjourning this hearing I would like to say that you, Mr. Davila, are an example of the fact that a handicap does not necessarily handicap a person's ability to achieve. My congratulations to you. Thank you all. We now stand adjourned.

[Whereupon, at 12:10 p.m., the subcommittee adjourned subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

Personal Statement by Julie Moody

I was born on July 29, 1960 with cerebral palsy.

My educational background, despite the physical disability, is relatively normal. In the elementary years my parents sent me to special schools for the handicapped, but in 1977 I entered Jefferson Davis Highschool in Montgomery AL, the largest highschool in the state. Four years later I graduated with honors with a 3.7 average on a 4 point system. In 1981, I enrolled at Troy State University at Montgomery, where I pursued a double major in Health and History. While I lived on campus, I was an active member of the Baptist Student Union and the choir, worked part-time as a movie usher, and was an assistant softball coach for a youth team. Finally, in 1985, I graduated from the University with a 1.9 average on a 3 point system.

I am proud of my educational accomplishments, but I look at them as a means to an end, and not an end in themselves. What I really desire is a meaningful, self-sustaining job. While I was finishing my degree in the summer of 1985, I began looking in earnest for a job that would fit my educational degrees in either Health or History. After meeting with initial unsuccess, I accepted a temporary job selling lightbulbs through phone solicitation.

In the Fall of 1985, I became associated with the Rehabilitation Program in Montgomery in hopes of finding employment through their help. The results have been generally disappointing, probably due to the fact the Program is more oriented to serving the needs of the mentally disadvantaged, than the physically handicapped. In March of 1986 I was advised to move out of my parents' home, on the assurance of financial assistance and a job. I moved into Federal housing, and the Program gave me twenty dollars a month for three months, but I have yet to find employment. During the Spring, I went to two schools to interview as a teacher's aid for the mentally retarded, but was not hired for either position. After this, the Rehabilitation program offered me a job through Goodwill Ind. for $68 per month. Unfortunately, this amounts to 42.5 cents an hour, which was unfeasible given the average $70 medical bills I have per month.

While I continued to look for a job, I worked on and off in phone solicitations, and served as a private tutor for dyslexic children in basic subject areas such as Math and English. In the Fall of 1986, I took several state exams for the position of Activities Aide and Youth Services Aide, but despite doing fairly well on the tests, I have not heard back from the State. In October, through a job placement man offered by the Rehabilitation Program, I filled out several applications for Federal positions, but have not been hired. In April

of 1987 I typed up a resume through a friend of mine, and sent it to numerous places, both locally and nationally, from Alabama to California. On the basis of each state's job description booklets, I submitted various job applications to the states of Georgia, Florida and Tennessee, but have not been hired.

Recently, I have gone so far as to solicit help from the governor's office, and met with the administrative assistant to the governor. A local television station, WAKA of Montgomery, aired the story of my unsuccessful job search, but even this has proved to be of no avail.

I have come to Washington not to get someone's sympathy or to look for a handout, but to have the opportunity to get a job in which I can support myself. Right now, I live in a Federal Housing project, and collect a government check for disability, but truthfully, I would rather have neither if I could pay my own way. Being handicapped is ultimately only a state of mind, either in the person him/herself, or in those who perceive the person. I know personally I am capable of meaningful, quality work, but employers have not been willing to look beyond what they perceive as an insurmountable obstacle. All I want is a chance. All I want of the U.S. government is to insure that chance.

Signed,

Mr. Chairman:

I am pleased to submit testimony on behalf of H.R. 1546, the Cancer Patients Employment Rights Act.

I commend Mr. Biaggi on submitting this bill which would prohibit job discrimination, and protect the rights of cancer survivors in the workplace. It takes foresight to look beyond the cancer experience to the living experience. For the cancer survivor it also takes great courage.

I was 18 years old, just beginning my first semester at the University of Colorado when I was diagnosed with cancer. I returned to California and was successfully treated with chemotherapy and radiation. I thought this battle would be my most difficult, I was mistaken. The fears associated with cancer are reflected in the way society treats those who survive. In the 12 years following my treatment, I have lost jobs, promotions and benefits because I have a cancer history.

The first experience I had with job discrimination was the most painful. I had worked many years in the cosmetics industry as a sales representative. I have proved my capability and was being considered for a promotion to a much larger territory. There were only two of us to be interviewed, myself and a co-worker who was also my closest friend. The interviews were to take place in New York with the Vice President of Marketing. My co-worker had her interview first. When she returned to San Francisco she already had the job. I was never even given the opportunity to interview. It seems she had told the interviewers and our supervisors that I had a cancer history. I was devastated.

This experience and others I have had made me aware of the fears, myths and ignorance which surrounds this disease. For those of us who are survivors of childhood cancer, our dreams are fragile. We have fought to stay alive, why now must we fight to keep our jobs?

Coping with life after cancer is the goal of CANCERVIVE, a non-profit organization I founded two years ago. Educating the public, medical profession and government about the obstacles facing former cancer patients is an important function of CANCERVIVE.

I look forward to the passing of H.R. 1546; the Cancer Patients Employment Rights Act, and to changing attitudes of the public concerning cancer survivors. I hope that togeter we can open both hearts and minds,

SUSAN WEINTRAUB NESSIM